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Lilianne Ernestine Krosenbrink-Gelissen

Sexual Equality as an Aboriginal Right

The Native Women's Association of Canada and the Constitutional Process on Aboriginal Matters, 1982-1987

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SEXUAL EQUALITY AS AN ABORIGINAL RIGHT:

The Native Women's Association of Canada and the Constitutional Process on Aboriginal Matters, 1982-1987

Een wetenschappelijke proeve
op het gebied van de sociale wetenschappen
in het bijzonder de culturele antropologie

Proefschrift
ter verkrijging van de graad van doctor
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volgens het besluit van het college van decanen
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LILIANNE ERNESTINE KROSENBRINK-GELISSEN

geboren 25 december 1957
te Beek Limburg

Promotor:	Prof. dr. A.A. Trouwborst
Co-promotor:	dr. C.H.W. Remie

PREFACE

Aboriginal women in Canada have been the main subjects of my anthropological studies. It was almost inevitable that they should feature in my Ph.D. research. The purpose of this study is to gain a deeper understanding of the strategies used by aboriginal women, particularly Indian women, to pursue their political goals - as opposed to those of men - in the constitutional process on aboriginal matters from 1982 until 1987. In this respect I also investigated the way aboriginal women are organized in Canada. This exploratory research focusses primarily on aboriginal women's double identities, as women and as aboriginal persons, and their struggle to deal with the resulting conflicts and dilemmas in a political context of aboriginal constitutional claims. Fieldwork research was sponsored by a Government of Canada Award.

First and foremost, I am greatly indebted to all persons in the field who provided me with their knowledge and ideas. Without their hospitality, support, and sympathy this book could not have been written. For reasons of privacy their names have been left out. I wish to thank the Assembly of First Nations, the Native Council of Canada, the Metis National Council, the Inuit Tapirisat of Canada, and the Inuit Women's Association in particular. But the Native Women's Association and all women whom I worked with deserve the most credits in the realization of this book. I owe them and their organization respect and sympathy. At all times, I have tried to prevent detriment to their political role in Canadian society without compromising, however, my task to remain critical as an anthropologist. I wish to express gratitude to my supervisors, Albert Trouwborst and Cornelius Remie, who have guided me through the various stages of writing a doctoral thesis. I thank them for their comments and encouragements, and for having faith in me. I am also grateful to the members of Albert Trouwborst's 'promovendi-overleg' for their critical comments on earlier drafts of this publication. Britt Fontaine and Ton de Goeij deserve credits for reviewing and commenting on the final draft. I am indebted to Linda Jones for correcting style and grammar. Any obscurities remaining in the text are due to my writing and are entirely my responsibility. I also thank the Stichting Antropologie for their financial support. This made it possible for me to have the text edited by a native speaker. Pierre

van der Meer must be given credits for his computer skills. I would like to express my gratitude to the Centre for Women's Studies at the Catholic University of Nijmegen for using their facilities and for giving me a sense of academic belonging. My husband Paul Krosenbrink provided financial resources. Above all, I thank him for his emotional support and encouragement to keep on going. Our daughter Stephanie Carmen, who was born during the period of writing this dissertation, turned out to be a source of inspiration.

Lilianne E. Krosenbrink-Gelissen
Nijmegen, The Netherlands
June 1991

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LIST OF ABBREVIATIONS

ACUNS	Association of Canadian Universities for Northern Studies
AFN	Assembly of First Nations
AIM	American Indian Movement
B.C.	British Columbia
CACSW	Canadian Advisory Council on the Status of Women
CASNP	Canadian Association (Alliance) in Support of the Native Peoples
CCSD	Canadian Council on Social Development
Cdn.	Canadian
CFN	Coalition of First Nations
Dept.	Department
DIAND	Department of Indian Affairs and Northern Development
DOTC	Dakota Ojibwa Tribal Council
FMC	First Ministers' Conference on Aboriginal Constitutional Matters
Govt.	Government
HoC	House of Commons
IA	Indian Act
ICNI	Inuit Committee on National Issues
I.L.O.	International Labour Organization
ILRC	Indian Law Resource Center
INAC	Indian and Northern Affairs Canada
IRIW	Indian Rights for Indian Women
ISI	Indigenous Survival International
ITC	Inuit Tapirisat of Canada
IWA	Inuit Women's Association
LK	Subjunction by Lilianne Krosenbrink, the author
Man.	Manitoba
MMF	Manitoba Metis Federation
MNC	Metis National Council
N.B.	New Brunswick
NCAR	National Committee on Aboriginal Rights
NCC	Native Council of Canada
NDP	New Democratic Party
NEDAB	Native Economic Development Advisory Board of Canada
Newfoundl.	Newfoundland
NIB	National Indian Brotherhood

n.p.	not published
N.S.	Nova Scotia
NWAC	Native Women's Association of Canada
N.W.T.	North West Territories
ONWA	Ontario Native Women's Association
PC	Progressive Conservatives
P.E.I.	Prince Edward Island
PM	Prime Minister
PTMA	Provincial and Territorial Member Association
QNWA	Quebec Native Women's Association
Sask.	Saskatchewan
SNWA	Saskatchewan Native Women's Association
SOS	Department of the Secretary of State
WCIP	World Council of Indigenous Peoples

INTRODUCTION

> 'Today, native peoples all across Canada are fighting for rights to their own lands, to their own governments, and to their own cultures. The historical record is important for it makes clear that women's fight for their rights as women is not at odds with such struggles, as is sometimes asserted, but an intrinsic part of them' (Leacock, 1981, p. 32).

The year 1982 was a significant landmark in the process of Canadian state formation. On April 17, Queen Elisabeth II of the British Commonwealth signed Canada's new constitution, thereby completing its repatriation. The Constitution Act of 1982 regulates the formal relationship and the division of powers between the federal and provincial governments, and guarantees fundamental rights and freedoms for all Canadian citizens. Moreover, it provides for legal recognition of the aboriginal peoples and their according rights. They are the Indians, the Metis (a people of mixed white-Indian descent), and the Inuit (Eskimos).

The Canadian Constitution Act of 1982 was the first piece of constitutional legislation of any nation(s)-state that had an aboriginal rights provision (1). For the purpose of defining 'aboriginal rights', it provided for a negotiation process between the state authorities and national aboriginal organizations. Between 1982 and 1987 a series of 'First Ministers' Conferences on Aboriginal Constitutional Matters' took place. This period is referred to as the constitutional process on aboriginal matters. This process can be viewed in two ways: as a domestic process of political dialogue between the aboriginal peoples and Canadian society at large, or, within an international context, as an example of a revitalization process of the rights of indigenous peoples in many countries.

The issue of both individual and collective human rights, in which aboriginal (or indigenous) rights are firmly embedded, appears to have gained growing attention after the Second World War. However, not before 1980 was serious and worldwide attention paid to the rights of indigenous peoples within nation(s)-states, often referred to as 'the Fourth World'. Since the establishment of the

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1) Whereas the term 'nation-state' reflects the dominant political ideology in most states, 'nation(s)-state' bears more similarity with social reality (cf. Smith, 1981).

United Nations Working Group on Indigenous Populations in 1982, the number of participants at the annual sessions in Geneva (Switzerland) has been growing, both on the part of member states and on the part of representative national and international indigenous organizations.

Aboriginal rights are often seen as anomalous to the conventions of liberal democracy. The Canadian Constitution Act of 1982, in providing for such rights, recognizes those anomalies and it was therefore perceived that in time Canada could contribute principally to a new legal and political order that gives room to the rights of indigenous peoples in nation(s)-states (Berger, 1983, p. 374). It is for this reason that developments within the Canadian constitutional process on aboriginal matters were watched with attentive interest by the world society. Although this process officially came to an end in Canada in March 1987, negotiations on aboriginal rights are still going on between the federal and provincial governments on the one hand, and aboriginal organizations on the other hand.

Object of research

Four national aboriginal organizations were invited to participate officially in the Canadian constitutional process on aboriginal matters: the Assembly of First Nations (AFN), the Native Council of Canada (NCC), the Metis National Council (MNC), and the Inuit Committee on National Issues (ICNI). At the time when the constitutional process on aboriginal matters started, there was a fifth national aboriginal organization; the Native Women's Association of Canada (NWAC). Given the fact that the Native Women's Association was not invited as an official participant in the First Ministers' Conferences on Aboriginal Constitutional Matters, I wanted to investigate the way aboriginal women in Canada were organized and the strategies they used in order to pursue their political goals within the constitutional process towards defining aboriginal rights. In order to comprehend adequately how aboriginal rights were politically and legally relevant to and affected aboriginal women's lives several questions were explored. For example, why did women organize into a separate national aboriginal women's organization in Canada; did their political aspirations differ from those of their male counterparts; and if so, why did they differ, and to what extent?

The decision to focus on a political rights issue, in particular as it

relates to aboriginal women, was easy to make. Within the constitutional process on aboriginal matters, the rights of aboriginal women were an issue to be reckoned with by both aboriginal organizations and the federal and provincial governments.

The Constitution Act of 1982 provided a significantly new context in which aboriginal peoples could express their concerns. Before 1982, aboriginal peoples had already made it clear that within the constitutional framework of aboriginal rights, the right to self-government was of paramount importance. Aboriginal self-government can be loosely defined as the right to determine membership, to develop own political institutions, and to have own legislative powers in accordance with the aboriginal peoples' or group of people's cultural traditions. It was obvious that the constitutional agenda of the forthcoming First Ministers' Conferences would be dominated by discussions on both the entrenchment of the right to aboriginal self-government and on defining it in operational terms.

Although, in the end, all national aboriginal organizations - including the Native Women's Association - want self-government, NWAC's political aspirations are centered upon the sexual equality issue; the principle of sexual equality between aboriginal men and women must stand unambiguously and constitutionally above and touch all aspects of aboriginal rights, including self-government (NWAC, 1980 & 1981) (2). I intend to explore the issue of self-government only as far as it relates to the sexual equality issue as relevant to aboriginal women and their national body, the Native Women's Association.

Although social scientists have increased their interest in women's studies since the last two decades, women's movements in the Fourth World have been largely neglected (cf. R. Green, 1983, & Jamieson, 1982). The reason for this may be that women's movements are conceived of as fundamentally the same despite variations that are recognized. Furthermore, Albers (1983a) argues that gender is not a central focus in research on indigenous peoples' political lives. Therefore, gender linked problems in indigenous societies of today are not subject to serious analysis.

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2) Whereas 'sexual equality' is used in a legal context, 'gender equality' is more often used within a social scientific context. Irrespective of the context, I will use the term 'sexual equality' throughout this publication since this term was continuously used by informants themselves.

In an overview of recent academic productions in 'Canadian Native Studies', Price (1984) concludes that women scholars are hard to motivate to specialize in 'Native Studies'. If they are so motivated, they tend to stay with (sub) disciplines that have been traditionally associated with women, such as: Arts, Dance & Music; Medicine and Psychology; and, Literature and Education. He urges women scholars to do research on aboriginal women within the fields of law and politics. This study, in this respect, wants to contribute to filling an academic gap.

Theoretical approaches

In order to comprehend adequately how the Native Women's Association, as a manifestation of an aboriginal women's movement, developed and manifested itself, it is essential to study the historical and political context. In dealing with the aboriginal women's movement in Canada, 'Fourth World' may be a sensitizing concept. The term refers to particular socioeconomic, cultural and political circumstances and colonial relations. Dyck (1985, p. 1) argues: 'The form and substance of their relations with national and state governments are matters of fundamental significance in their everyday life and future prospects as indigenous peoples'. The 'Fourth World' concept is also increasingly used by indigenous peoples within nation(s)-states as part of their strategies in order to pursue their political goals domestically as well as internationally (3).

This study may be conceived as a case study of women's movements in the Fourth World. Since hardly any research has been conducted on the contemporary roles and positions of aboriginal women in Canada, this study has an exploratory nature. It is an attempt to fill an academic gap and to encourage others to do research within this field. The aboriginal women's movement in Canada is an interesting feature. Since we are dealing with three distinct aboriginal peoples - the Indians, the Metis, and the Inuit - it is possible to operationalize a comparative perspective from within. It has to be mentioned, however, that this study primarily deals with Indian women. The Canadian context of the constitutional process on aboriginal matters is of interest as well. It provided a forum for

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3) For further reading on the Fourth World concept, I refer to: Ahenakew, 1985; Dyck, 1985; Graburn, 1981; and Manuel & Posluns, 1974.

discussing sexual equality within the broader frame of aboriginal rights, and gave aboriginal women room to develop strategies in order to reach their political goals.

Following from the chosen subject of research, it is not so much in the line of this study to elaborate analytical frameworks that are often used to comprehend the nature of power relationships between majority and minority groups, or cultural persistence of minorities and enclavement vis-a-vis state formation (4). These frameworks generally do not recognize the diversity among minority groups and the inequality within (Kato, 1986, p. 66) (5). As Duclos (1990, p. 335) argues: 'The calculus of minorities is complex; it is important to resist the tendency to ascribe minority status to the whole person or group, neglecting the ways the group or its members (or some of them) possess power relative to others. Furthermore, the similarity between majority and minority groups, in struggling for power, is ignored (Hannerz, 1976, p. 433).

In order to assess critically how aboriginal women pursue their political goals within the context of the constitutional process on aboriginal rights, I have used three different theoretical approaches which served to analyse the subject of research. They derive from anthropological subdisciplines. public interest anthropology, ethnicity and women's studies. I borrowed the term 'public interest anthropology' from Davis and Menget, as cited in Wright (1988, p. 372). It means that the research focuses on pressing social and political issues of the day. Fundamental to my research were values and opinions of aboriginal women as individuals, as a group, and as legal entities. In other words, the meanings aboriginal women attach to aboriginal rights within the Constitution Act of 1982 is of primary concern to me.

Ethnicity is a means by which people are organized in relation to the productive and political processes of society (Ng, 1981, p. 97). As A. Cohen (1974b, p. 97) states: 'Ethnicity involves a political phenomenon, as the symbols of traditional culture are used as mechanisms for the articulation of political alignments'. Although

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4) Cf Asch, 1984, Boldt & Long (eds), 1985, Castile & Kushner (eds), 1981, Lemaire, 1986, and Wolf, 1982

5) The term 'minority' is often combined with 'ethnic' In dealing with ethnic minorities in Canada, one should be careful not to make any suggestions of this kind to aboriginal persons since 'ethnic minority is increasingly regarded as an insult to aboriginal peoples (Brody, 1981, p 15)

socioeconomic and political factors may be crucial to the shaping of ethnic identity and ethnic group formations, other factors may be important as well. Furthermore, material interest does not always have to be involved in ethnicity.

Aboriginal peoples are generally regarded as a group (or groups) outside the ethnic structure of Canadian immigrant society. This is also reflected in the academic culture within Canada. Whereas immigrant groups are often studied within the theoretical framework of ethnicity, aboriginal peoples are confined to another field; Native Studies (6). However, theoretical concepts of ethnicity can be most helpful in finding adequate answers as to why aboriginal peoples in Canada wish to remain distinct, and how their separate (self) identity, being a social category, is shaped and continuously reshaped. Since this study specifically deals with aboriginal political organizations, I consider the following quotation from Provinzano (1976, p. 386) useful:

> 'As ethnic groups continue to concern themselves with the development of ethnic consciousness as an adjunct to organization, it becomes ever more necessary that social scientists make every effort to comprehend and incorporate the use of ideology by particular groups into the analytical tools devised to deal with these observed phenomena'.

Ideology, as a set of beliefs, provides for organizational mechanisms of ethnic groups. It also reflects the interests and political goals of aboriginal organizations that we are dealing with. Ideology is integrative since it serves a whole set of functions, such as: legitimizing the political claims; mobilizing the grass roots; shaping new (ethnic) boundaries and new political relations (cf. A. Cohen, 1974b, p. 98; Eickelman, 1981, p. 86). The Native Women's Association, being an integral part of the aboriginal peoples' movement in Canada, nevertheless holds a unique position. The main purpose of this study is to explore how NWAC pursues to integrate its distinct political mandate within the ideological framework used

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6) Research within the theoretical framework of ethnicity mostly focused on immigrants in search for employment and better opportunities Recently, the focus has shifted to ethnic group identity and maintenance while at the same time people become socio economically mobile Hence, the focus has shifted to the dynamics of ethnic boundaries

by the other national aboriginal organizations vis-a-vis the state authorities. Or to put it in other words, how does NWAC make the sexual equality issue relevant to the concept of aboriginal self-government within the Canadian constitutional process on aboriginal matters? Within the analysis I refer to the ideological concept of traditional motherhood.

During the last two decades, women's studies have contributed significantly to a growing tendency to perceive of women as active participants in male-dominated structures rather than as passive victims. Therefore, we have to consider strategies aboriginal women use in order to stress issues of importance to them and aspects through which they can develop themselves.

Theoretical concepts within women's studies have also procured a re-evaluation of former anthropological studies (cf. for example Ardener, 1975, and Reiter, 1975). Within the context of this research, women's studies can be helpful in tracing how Canada's aboriginal women have tapped their ancestral roots in order to define their contemporary role and position within aboriginal society (7). It should be interesting to assess whether debates on aboriginal women's resourcefulness and resilience in the past have been affected by feminist theories. However, the reader should bear in mind that it was not the object of this study to reconstruct authentic, pre-contact, forms of aboriginal cultures. My primary concern has rather been with perspectives from aboriginal persons themselves - and particularly those of women - in how their past, their present and also their future, should be conceived.

Research methods

As is the case with almost all academic products, this study is to a significant extent based on research of the relevant literature. The literature used can be classified into the following categories: books, articles, unpublished manuscripts and theses, government documents, aboriginal organizations' publications, catalogues, magazine and newspaper articles, and transcripts from conferences. As far as aboriginal women are specifically concerned, I have taken advantage

7) Still, we have to take into consideration that a lack of adequate and reliable knowledge of the pre contact roles and positions of aboriginal women may limit our comprehension of the roles these women play today in the reformulation of aboriginal identity, or identities

of the literature written both by aboriginal women themselves and about them.

Fieldwork research pertaining to this study started in 1985. Besides, I have incorporated the results from previous fieldwork research undertaken in Canada. From April till June 1983, I stayed at Brandon University in Brandon, Manitoba. The research centered on the question whether having legal status or not did affect the measure of Indian women's active participation in aboriginal organizations that are seeking a re-formulation of aboriginal identity vis-a-vis Canadian society at large. The research report is largely based on the Indian Act and the sociolegal and political implications for Indian women (Krosenbrink, 1983).

Fieldwork was conducted out of the Institute of Canadian Studies at Carleton University in Ottawa (Canada), from September 1985 till April 1986. This research was sponsored by a Government of Canada Award. I revisited Canada from August 15 till September 12 1987. While traveling throughout the country, and staying a few extra days in Ottawa, I was able to further my knowledge by re-interviewing key informants and by gathering more literature on my subject. My last visit to Canada, and particularly to Ottawa, took place between August 12 and 19, 1990. The main purpose of my stay was to participate in a conference of the International Commission on Folk Law and Legal Pluralism. One of the themes, 'Indigenous Self-Determination and Legal Pluralism', attracted an international academic audience, as well as some of my former informants. Hereby, I was able to learn about the latest developments within the field of aboriginal rights, and the sexual equality issue as related to it.

I also took the opportunity to seek informants on the European front. In August 1987 and 1989 I attended sessions of the United Nations Working Group on Indigenous Populations in Geneva. I considered myself lucky that the U.N. Working Group sessions had many different delegations from the aboriginal peoples of Canada.

Informants from aboriginal organizations were sought at:
1. The Assembly of First Nations;
2. The Native Council of Canada;
3. The Inuit Committee on National Issues;
4. The Metis National Council;
5. The local, provincial and national levels of the Native Women's Association of Canada;

6. The Indian and Inuit Nurses Association;
7. The Inuit Women's Association;
8. The Indian Rights for Indian Women; and,
9. The Native Friendship Centre in Ottawa as well as the National Association of Native Friendship Centres.

Informants from government's agencies were sought at:
1. The Department of the Secretary of State;
2. The Department of Justice;
3. The Office of Constitutional and Aboriginal Affairs;
4. The Canadian Advisory Council on the Status of Women; and,
5. The Department of Indian Affairs and Northern Development.

For the purpose of conducting interviews with persons without an aboriginal or a governmental background, contacts were sought with several non-aboriginal groups, university teachers and students.

With regard to the fieldwork, 85 interviews were conducted with 61 informants between 1985 and 1990. This number comprises thirteen male and 29 female aboriginal informants, as well as twelve male, and seven female non-aboriginal informants. Several informants were interviewed more than once and statements were double-checked. Whereas a few interviews were of a relatively short duration, and were of an informative nature, most were of an in-depth nature and took several hours. The nature of the research specifically required the inclusion of the names of institutions, and the appointments or capacities of informants in respective institutions. Without the specific background from which statements were made, this study would have been incomprehensible.

Aboriginal and non-aboriginal persons involved in aboriginal political matters tend to operate in a rather close network of which I became a part as well. To put it in other words, Ottawa is a small world. Therefore, reporting an informant's position within a national aboriginal organization or a government office in connection to his or her age, sex, Indian band affiliation, marital status, or Indian legal status would have easily revealed the informant's identity. In order to prevent this I restricted to reporting the dates of the interviews. The dates refer to the informant's background that will remain in my personal files. In order to safeguard the informant's anonymity, I refrained from using direct references and citations that might have

revealed easily the identity of an informant as well. Furthermore, I did not use a tape recorder while conducting interviews. Altogether, these precautions allowed persons, often in the public spotlight, to make private statements on politically sensitive issues. In this respect, I refer to Lithman:

> 'It is imperative for the scholar at least to avoid a situation in which his work can be used to the detriment of the people he writes about, a well-established anthropological tenet, or to impede the work of those who actively seek to improve their and their fellow Indians' lot' (1984a, p. 21).

Next to the interviews, I attended several unofficial as well as official meetings and conferences as an observer and I participated in socials with Indian, Metis and Inuit women. Thus, the research method on which this study is based comprises both the instruments of observation and interviewing. Given the specific situation of my fieldwork research, and my preoccupation with national offices of aboriginal organizations, I could not use participant observation as a research method.

During the research I made no attempts to hide my identity, my personality or my anthropological background. This appears not to have influenced the relative success of my fieldwork. Despite the limited time available I was able to assess the necessary data. All informants who were selected and approached to participate in this research were willing to comply with my request. I found that the informants' cooperation was connected to their personal opinions as to the relevance and effectiveness of the study undertaken. Informants who were located in governmental agencies often stated that it was appreciated that an 'outsider' would consider an academic report on the complex issue of aboriginal rights (8). Informants who were to be located in aboriginal agencies had other reasons to contribute to the success of the fieldwork. This can best be summarized by a statement from an Indian informant in Brody (1981, p. 12): 'If Indians are going to continue to be Indians in this place (...), then their presence should be made known to everyone, everywhere'. And, as Brody himself (ibidem, p. 12) continues: 'This,

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8) It was mentioned several times that my non-Canadian background was a positive asset. Nowadays, there is a growing interest in European studies on aboriginal peoples in North America.

as he understood it (...), is the reason for speaking at length and with great truthfulness'. In review of the statements above, I was conscious that, as a practising anthropologist, I may be used by aboriginal informants as a mouthpiece for their ideological struggle. However, the ideological content of informants' statements was of central importance to my research.

It is clear from the outset that most aboriginal informants were part of the aboriginal leadership. In this sense, this study is an elite study. Nevertheless, aboriginal political leadership in itself is not an elitist institution since it is a political position open to everybody, not requiring certain qualifications. It rather focuses on a certain type of personality (cf. Boldt, 1980, p. 29).

Outline of chapters

The first chapter deals with aboriginal peoples and the issue of aboriginal rights in general. The historical, legal, and political structure of the Canadian state is briefly described in order to provide a frame of reference for the origins of aboriginal rights, and to provide a context in which relationships between the federal government and national aboriginal organizations took shape. The term 'aboriginal peoples' appears to be complex. Perceptions of who the aboriginal peoples are vary according to the sources used. The same holds for the aboriginal rights issue.

In the second chapter, the development of the Indian Act is described as one of the most outstanding colonial policy manifestations pertaining to Indian people. The Indian Act, at the same time, proves to be an indicator for prevailing gender inequality between the Indian sexes today. It is explored in how far the sex-discriminatory legal status regulations in the Indian Act has affected the lives of Indian women, and shaped their (political) relationships with men.

The third chapter deals with the evolution of the Native Women's Association of Canada (NWAC). International as well as national developments since the 1960s are reviewed to provide a framework in which NWAC developed and manifested itself. The existence of a separate national aboriginal women's organization in Canada cannot be adequately comprehended without taking into account the implications of the Indian Act for Indian women. Furthermore, the Canadian repatriation process reveals how far NWAC's strategies are

interrelated with the opportunities provided to particular groups by the Canadian state, in order to seek their distinct goals and rights.

Chapter four describes the various sections within the Constitution Act of 1982 that pertain to aboriginal rights, as well as to sexual equality. I will explain why aboriginal peoples in general strongly advocate the entrenchment of their rights within the Constitution Act. Furthermore, I will explore the question of what the Native Women's Association wants in relation to this Act, and the problems and dilemmas with which the organization is confronted in seeking sexual equality rights for aboriginal women.

The fifth chapter deals with strategies used by the Native Women's Association in order to reach its political goals during the constitutional process on aboriginal matters. The key concept behind NWAC's strategies is that of 'traditional Indian motherhood'. The concept combines a complex of functional mechanisms, of which the most important is the integration of sexual equality in the aboriginal self-government concept.

Within the sixth chapter, developments leading up to the First Minister's Conferences on Aboriginal Constitutional Matters are described. Despite NWAC's lack of a formal position at these conferences, the organization has played a significant role within the process towards defining aboriginal rights. This chapter, for this reason, focuses on NWAC's strategies in action.

Chapter seven describes Bill C-31, an act to amend the Indian Act. Regulations within this new act appear to combine sexual equality with Indian band control of band membership. This has serious implications for women who have previously lost their status rights. As the constitutional process on aboriginal matters is coming to a close in 1987, Bill C-31 appears to remain the only avenue for Indian bands to seek limited self-government.

The last chapter refers to the problem of former non-status Indian women and their children in either exercising or acquiring band membership rights. These rights are of the utmost importance to most Indian persons since they are conceived as official recognition of their aboriginal identity. I argue that women continue to encounter problems since the sexual equality issue - as a result of the former sex-discriminatory status regulations in the Indian Act - is automatically caught up in debates on Indian self-government.

This study ends with the conclusions, and with an epilogue. The latter will give the reader an update on significant current events until 1990. Lastly, I will present my suggestions for future research.

> 'Descendants of the colonists imagine that our (European, LK) ancestors discovered a New World. In fact, it would be more accurate to suggest that we discovered a new landscape in which to place our existing world. In fact, it was the indigenous peoples who had a new world to discover and to deal with upon the arrival of the Europeans' (Asch, 1984, p. 25, note 7).

In order adequately to explain the position of the Native Women's Association on aboriginal rights, I will describe briefly the sociopolitical and legal structure of the Canadian state. It is within this multidimensional context that the concept of aboriginal rights obtained its legal foundation and the political relationship between aboriginal organizations and the federal government took shape. I will also briefly discuss the complexity of the term 'aboriginal peoples'. This proves not to be a self-evident term. Within the Canadian context it is not always clear to whom the term refers. Furthermore, with respect to 'aboriginal rights', there appears to be a significant difference of opinion between the federal government and national aboriginal organizations.

1.1 Aboriginal peoples within a Canadian context

The North American continent - of which the Canadian state is a part - was not uninhabited when first explored and settled by Europeans from the beginning of the 16th century onwards (1). It was the domain of a variety of peoples who had their own territories, laws, political institutions, cultures, languages, and religions. However, it is only within the context of the process of colonization and relations between the original occupants and European settlers that a definition of 'aboriginal peoples' can be

1) The first recorded voyage to Canada was undertaken by the Italian brothers Cabot in 1497, who sailed under commission of King Henry VII of England. The Cabots were followed by Jaques Cartier who sailed under commission of King Francois I of France and who arrived in Canada in 1534. The two expeditions drew the British and the French into a colonial enterprise that significantly shaped the foundation of the Canadian state (INAC, 1973, pp. 15-16).

understood (Kato, 1986, p. 7; Slattery, 1985, p. 115). They are: 'the original surviving inhabitants of lands that now are part of nation-states established and controlled by peoples who arrived after them' (Indigenous Survival International, 1986, p. 1). And furthermore: 'A Fourth World of peoples whose cultures, economies and identities are inextricably tied to their traditional lands and resources' (ibidem, p. 1).

The Canadian state is basically an immigrant society. The term 'aboriginal peoples' is used to distinguish between immigrant Canadians and those who descend(ed) from the original inhabitants of what is now known as the Canadian territory. However, before the mention of 'aboriginal peoples' in the Constitution Act of 1982, the term 'native peoples' was most commonly used to designate the collectivity of Indians, Metis and Inuit in Canada (2). Throughout this publication, I will exclusively use the term 'aboriginal peoples'. Furthermore, ever since the constitution repatriation process that started in 1978, there has been a growing tendency in Canada to use terms that the aboriginal peoples reserve for themselves. This way, 'Eskimos' is replaced by 'Inuit', 'Halfbreeds' by 'Metis', and 'Indians' is replaced by 'First Nations' or an Indian nation's particular name (such as: Cree, Mohawk, Kwakiutl). Publicly accepted self-ascribed principles of identity reflect a changing attitude towards aboriginal peoples, at least on the emotional level (cf. Duclos, 1990, p. 328; Trottier, 1981).

Since aboriginal persons - just like non-aboriginal persons - are Canadian citizens, the important questions are: what makes an aboriginal person or group of persons 'aboriginal'; what criteria are used, and in what context, to establish this distinct identity (cf. Castile, 1981b)? 'Aboriginal peoples or persons' most generally refers to:

1. contemporary societies that trace their ancestral roots, at least in part, to those that existed prior to European contact and settlement;
2. members of those societies; and
3. persons, although not members of such societies, who can trace

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2) There are at least fifteen more terms used to designate either the entire aboriginal population or a particular part of it: native Indians, (non)treaty Indians, reserve Indians, (non)status Indians, registered Indians, enfranchised Indians, Metis, Halfbreeds, Eskimos, indigenous peoples etc. (NCC, 1981, p. 4).

their ancestry through at least one line to individuals who belong(ed) to such societies (Asch, 1984, p. 5; Morse, 1985, p. 1).

Based on ancestry, as the above references suggest, the aboriginal population would constitute over five per cent of the total population of some 26 million in Canada (cf. Laroque & Gauvin, 1989; Taylor, 1979). However, it appears that the self-identifying aboriginal population does not exceed two to three per cent of the total Canadian population. Hence, biological background in itself is not a determining factor with respect to a person's or a group of persons' ethnic identity. In dealing with ethnic relations - in this case immigrant (or non-aboriginal) Canadians and aboriginal Canadians - we have to look for the boundary markers that make the organization of two distinct group identities relevant (cf. Barth, 1969; R. Cohen, 1978, p. 388; Epstein, 1978, p. 100). The boundary markers that function as criteria for the establishment of ethnic identity may be: culture, language, religion, skin colour, occupational preoccupation, legal status etc. As far as cultural criteria are concerned, the following is of relevance:

'The important thing to recognize is that drastic reductions of cultural differences between two ethnic groups does not correlate in any simple way with a reduction in the organizational relevance of ethnic identities, or bring a breakdown in the boundary making process' (Barth, 1969, pp. 32-33).

According to Stymeist (1975, pp. 73-75), the term 'aboriginal' is different from 'Italian' or 'Ukrainian'. It is posited outside the community's regular system of ethnicity and does not pertain so much to cultural differences, but to folk ideologies and race. 'Aboriginal' is contrasted to 'white'. All non-aboriginal persons are considered 'white'. Therefore, it becomes meaningless to discuss e.g. Chinese-Cree relations. Relations exist between the categories 'white-aboriginal'. The ethnic boundaries between aboriginal and non-aboriginal Canadians continue to exist despite a flow of personnel across them (Barth, 1969, pp. 9-10).

Canadian society at large is not consistent in the use of criteria by which aboriginal persons are identified. This leads to confusion as to whom the term 'aboriginal persons' refers. Whereas the public

uses primarily skin colour, the federal government uses legal criteria in establishing aboriginal identity. To complicate the matter further, self-identifying aboriginal persons may use other, social, criteria. Thereabove, identity is not static. How persons identify themselves may significantly depend on (changing) circumstances and on the context in which a particular identity is valued. The question 'who is an aboriginal person' in Canada appears to derive largely from the fact that legal status is not coterminous with ethnic or racial status (Kallen, 1982, p. 78). In the following chapters we will see that we should not underestimate the impact of laws on the ethnic self-ascription of persons. Lastly, there is no universally accepted definition of two of the three aboriginal peoples: the Indians and the Metis.

How the Canadian public identifies aboriginal persons

Racial discrimination is part of Canadian social reality. The social standing and cultures of aboriginal peoples are perceived as distinct from larger society. Individual aboriginal persons have no power to change that status perception. Distinctions are made on irrelevant grounds in relation to particular situations. For instance, it is very hard for aboriginal persons to obtain a job as a bank employee.

Aboriginal groups appear to score low in studies on the estimation of ethnic groups' positions (cf. Adams, 1975; Bolaria & Li, 1985). Only blacks and other coloured people score lower. The general belief that aboriginal peoples do have a special relationship with the federal government, based on the premise of their status as original inhabitants, and the romantic image of the 'noble savage', have something to do with it (Pineo, 1977, p. 157).

The public - I use the term here as an ideological block - is not well informed on aboriginal cultures, and issues that aboriginal peoples themselves consider important. The media are not interested in dealing with problems of aboriginal persons that result from discriminatory practices by the public (INAC, 1980d, p. 21; Ponting & Gibbins, 1980, p. 92). Furthermore, political parties have few if any ties with aboriginal peoples other than in the context of the Department of Indian Affairs and Northern Development (from now on: DIAND) (Tanner, 1983, p. 21). Since the majority of people meet aboriginal persons on the road, in stores, and in public drinking places rather than in their own communities, the circumstances under

which average Canadians meet aboriginal persons reinforce stereotypes such as 'dirty, lazy Indians' (Anderson & Frideres, 1981, p. 22; Brody, 1981, pp. 251-252; Cooke, 1984; cf. Eidheim, 1969). Stereotypes are passed on to following generations and become standards by which individuals are identified and valued. This results in a generally negative attitude by non-aboriginal Canadians towards aboriginal peoples, both as groups and as individuals.

How the federal government identifies aboriginal persons

The Canadian state is divided into ten provincial administrative units and two federal territories. The Indians and Inuit fall under federal jurisdiction. The Metis, and those Indians who are not legally recognized as such, fall under provincial jurisdiction.

The federal government has used, and still uses, primarily legal criteria for the establishment and recognition of aboriginal identity. Section 35 of the Constitution Act of 1982 stipulates that 'aboriginal peoples' are distinguished into Indian, Metis and Inuit peoples. Constitutional law does not give any clue as to whom these terms refer to. As far as the Inuit are concerned, there is not so much of a problem. The Inuit can easily identify themselves with their communities in which kinship ties still exist, even if they do not live there anymore. Their self-identification is recognized by the federal government. There are no Inuit legal status regulations. With respect to the Indians and the Metis, we have to explore federal legislation.

Until 1985 the Indian Act, with its inherent sex-discriminatory status regulations, prevented women from transmitting Indian (legal) identity to their children. Ethnic belongingness was established through the father. For that reason an Indian woman lost her legal status upon marriage with a non-Indian man (read: not legally recognized as such). Their children were not entitled to legal recognition as Indian persons. On the other hand, a non-Indian woman, through the Indian Act, obtained legal status upon marriage with an Indian man, as did their offspring. When a woman divorced her husband or became a widow, this did not affect her legal status which she obtained or lost through marriage as a result of the Indian Act.

Indian women who have lost their legal status generally still conceive of themselves as Indian persons. They may be considered 'Indian' by the community they come from, and may be recognized

by the public as Indians if they look Indian enough. Nevertheless, their aboriginal identity is officially denied by the federal government. On the other hand, non-aboriginal women who have obtained legal status as Indian persons do not identify themselves as Indian persons and are not recognized as such by the public. And yet they are considered Indian persons before the federal law.

In contrast to the Indians and the Inuit, the Metis were not officially recognized as an aboriginal people until 1982. However, a legal definition of 'Metis' - such as exists with 'Indian' - is lacking. The question of Metis identity is a complex matter. I will explore this further in paragraph 1.3. Moreover, Metis persons are almost always denied their separate identity by the public. They are either stigmatized as Indians or as white persons.

Federal government figures on the aboriginal population prove not to be helpful in assessing to whom the term 'aboriginal persons' refers. There are two different data collection instruments: one is the Indian Register at Indian and Northern Affairs which is based on the Indian Act status regulations; the other concerns census estimates with Statistics Canada (cf. Loh, 1990). Although census estimates are established on the basis of self-identifying criteria, they are far from accurate and are often too low. Aboriginal persons who live in remote parts of Canada are not always reached. More important, however, is the confusion around two separate features of identity: ethnic origin and ethnic affiliation. In fact, census questionnaires refer to ethnic origin rather than to ethnic affiliation and this causes problems, particularly with persons of a mixed parentage. In determining ethnic origin the Indian Act status regulations are given priority. It is clear from the above that the figures cannot therefore give us any reliable information on matters of self-identity and ethnic affiliation, since non-aboriginal persons are thus included as well (3).

Aboriginal versus non-aboriginal Canadians

Since the identity component is a significant symbolic dimension of ethnic relations, it is preferable to look for ethnic structures and

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3) Only since 1981, Metis and non-status Indians are incorporated in census material. Questions referring to their identity have been criticized since a division between 'status' and 'non-status' Indians is not considered to be of any relevance with respect to feelings of identity (NCC, 1981, pp. 8-9; cf. Pryor, 1984, p. 45).

ethnic relations rather than to evaluate ethnic population figures. The boundaries between aboriginal and non-aboriginal Canadians, as we will see, are based not so much on cultural values but more on political, socioeconomic, legal, and administrative considerations.

Canada is basically a relatively young immigrant society. People have not shared a history for a long time, nor do they have a common descent or language Therefore, it is no wonder that linkage to immigrant group loyalties and regional identification are much stronger than a unified national identity (Woodcock, 1979, p. 296). The 'we' feelings among aboriginal Canadians, on the other hand, are reinforced by common historical experiences of colonial oppression, deprivation and exclusion from larger society. The Indians, Metis and Inuit have much more in common today than they ever did before the arrival of the Europeans (cf. Fear, 1981, pp. 41-42, Fidler, 1970, pp. 10-11).
The collective terms of Indians, Metis and Inuit only came into use after the Europeans had arrived

Through the gradual development of Canada as an immigrant society, the aboriginal peoples began to experience their communality and began to develop a collective consciousness (Lemaire, 1986, p. 265)(4) The experiences of aboriginal communities in dealing with the federal government exemplifies the position of aboriginal peoples vis-a-vis larger society (Trottier, 1981, pp. 299-300).

The hierarchical structure in Canada is intertwined with the system of ethnic stratification Regardless of how ethnic relations are perceived, aboriginal Canadians remain unequivocally at the greatest disadvantage that is related to the paradigm of polarization between aboriginal and non-aboriginal Canadians The structural relationship between both groups is one of inequality. Since Canadian society is an immigrant society, aboriginal Canadians find themselves to be in, but not part of, Canadian society (5). Strict dichotomization gave rise to the development of a separate identity by aboriginal persons and provided for an ideological instrument of 'aboriginal versus white' antagonism, in which the latter implied all immigrants irrespective of their skin colour (LaViolette 1973, pp. 95-97) Despite bad living

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4) According to Molohon et al (1979, p 8), existing internal differentiations within an ethnic group, such as 'aboriginal peoples', reinforce the boundaries between groups rather than weakening them

5) Cf Adams, 1985, p 62, Berkhofer, 1978b, p xvi, Dahlie & Fernando, 1981, INAC, 1980d, Lautard, 1982, Ponting & Gibbins, 1980, p 323, Porter, 1975, Richmond, 1976

conditions, lack of opportunities and insufficient economic resources to be self-reliant, aboriginal persons, to a large degree, tend to prefer living in their own communities rather than in what they refer to as 'white dominant society' (cf. INAC, 1980b; Lithman, 1984a and b; Shkilnyk, 1985). One of the reasons for this may be that aboriginal communities are perceived as a crucial (spatial) component of their distinct aboriginal identity.

1.2 The Indians

The largest component of the aboriginal population consisted, and still consists, of people of Indian ancestry. At the time that first contacts between Indians and Europeans were established, the Indian population was estimated to have been around one million (Gottesman, 1985, p. 1212; INAC, 1986a, p. 6). Indian identity is no more homogeneous than is, for example, European identity. It is rather a collective term to designate a variety of nations that each had their own distinct cultures, religions and languages (Asch, 1984, p. 4)(6). Furthermore, the term is used to designate all those individuals who perceive themselves or who are defined by others as persons of Indian ancestry. This is not to argue that there are differences between the legal concepts of treaty versus non-treaty, and status versus non-status Indians that are of crucial significance in political relations. The Indian population is generally divided into more than 55 different nations, representing six distinct cultural areas and ten linguistic groups (cf. INAC, 1980c and 1986a; Jenness, 1932; Josephy, 1968; Wilson, 1974).

Given the great diversity in cultures, languages, and religions, it is impossible to describe aspects of the Indian people's traditional ways of life without making generalizations. The economic life of most Indian nations rested on hunting, gathering, and fishing. It forced the Indian people, who as a rule lived in band formations, to lead a semi-nomadic existence. Self-reliance depended on the constant mobility, cooperation, and strong sense of mutual responsibility among band members. A highly organized system of leadership was

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6) Many of the Indian nations later recognized as ethnic entities by both anthropologists and government agencies took shape in response to the spread of the fur trade. The fur trade was an economic process in which the Indians were as much active participants as the Europeans (Wolf, 1982, p. 194).

therefore not required (Brody 1981, p. 191; Shkilnyk, 1985, p. 92). Economic activities largely rested on a system of food sharing and egalitarianism in political life (Cox, 1987, pp. xi-xiv)(7). Gender relations within Indian cultures will be described in the next chapter.

Seasonal hunting and trapping activities are still a basic way of life among Indian bands in the more northern remote parts of the country. These activities sustain a vital link to the land, and to traditional norms and values attached to this mode of production. Although the Indian nations have a long history of independent existence, this is not well documented since they had an oral, rather than a literary tradition. That part of the Indian history that is abundantly documented deals with the process of colonization, however primarily dependent on European interpretations (Adams, 1975, p. 13).

The fur trade, which was instrumental to European colonial expansion in Canada, gradually spread from the east to the west, and into the north. At the beginning of the 17th century the French were already engaged in fur trading activities with the Indians in eastern Canada. Until the end of the 18th century the French and the British heavily depended on the Indian people's cooperation as trading partners, as middlemen, and as military allies (8). In 1763, the political, economic, and military competition between the French and the British came to an end and the latter were to become the sole colonial power. That same year, the British acknowledged the Indian nations' independent existence in the Royal Proclamation.

The British were increasingly able to establish military and trading posts throughout the country and consequently needed the Indian people's role as brokers or middlemen to a far lesser extent. On the other hand, the Indian people had become increasingly dependent on European merchandise and manufacture, and were gradually drawn deeper into the capitalist structure of the fur trade. The solid power

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7) The Pacific Coast Indians, the Indians of Southeastern Ontario, and the Plateau Indians had an economic way of life outside the system here described. They had a highly institutionalized political life and lived in (semi) permanent villages (cf. Cass, 1983a and 1983b; INAC, 1984b, Jenness, 1932).

8) Although French and British missionaries were already engaged in the christianization of Indian people, at that time no serious attempts were made to alter the Indian people's economic way of life since it was considered crucial to the prosperity of the European fur trading business The treaties that were signed between Indians and Europeans, until the 19th century, had the nature of friendship treaties rather than of land cessions (Kato, 1986, pp. 115-117; Patterson, 1972, p 70, Wilson, 1974, p 15)

balance between Europeans and Indians shifted to the advantage of the British. This pattern was also enforced through a new treaty policy from the 19th century onwards. The Indians ceded large parts of their lands to the colonial government (Adams, 1975, pp. 20-21; Frideres, 1985, pp. 56-57; Roosens, 1986, p. 36).

Canadian Indian policy, since 1867, has eroded the autonomy and self-governing authority of Indian nations by way of both the reserve system and the Indian Act (Little Bear et al., 1984, pp. xi-xxi). Paradoxically, thanks to both systems the Indians were able to survive as a distinct ethnic group in Canada. Through the Indian Act system the federal government reserved to itself the exclusive right to determine who had a recognized Indian identity. Reserves were established as government-controlled environments in which the status Indian population was meant to become assimilated to the dominant European culture pattern of Canadian society. The self-governing power of Indian bands, residing on reserves, was replaced by an Indian band council system which was to serve as an agency to implement the Indian Act regulations (INAC, 1980a, pp. 15-17).

The assimilation policy of the federal government, nevertheless, appeared to have had no overall success. Imposed government rules were sometimes incorporated into the Indian systems rather than fully replacing them. Particular Indian cultural features were able to persist and have shaped Indian communities in a manner distinct from Canadian society at large (cf. Castile & Kushner, 1981; Cox, 1987; Remie, 1987).

The reserve system largely contributed to the Indian people's sense of continuity with their past. Attachment to the reserve community and kinship affiliations reinforce the individual's link to Indian identity and culture. As an informant stated: 'On the reserve you fill up your native tank' (Krosenbrink, 1983, p. 31).

In 1988 there were nearly 500,000 status Indians in Canada. Approximately 60 per cent of them live within the 593 band communities on the reserves (INAC, 1989, p. 1). Furthermore, there are approximately 500,000 non-status Indians, of whom the majority consists of women and children. To them, community life on the reserves is considered important as well, even if they themselves have never experienced it. To many Indians, reserves represent a homeland concept, which is a vital part of their sense of (self)identity.

The making of non-status Indians appears to have had no effect in the direction of integration of aboriginal persons in larger society.

Under the heading 'Aboriginal versus non-aboriginal Canadians', I described the barriers that prevented Indians - irrespective of their legal status - from full participation within Canadian society at large.

The Indian people's incorporation into the Canadian state, as well as their common experiences with the Indian Act, has facilitated the creation of common political goals and desires (such as self-government). The status Indians are mostly politically represented by the Assembly of First Nations (AFN). The non-status Indians are mostly politically represented by the Native Council of Canada (NCC) (see table 1.1).

Table 1.1 National aboriginal representation by respective organizations. Divisions are based on sex and legal categories.

INDIANS				METIS				INUIT	
non-status		status		Pan Metis		Historic Metis			
men	women	men	women	men	women	men	women	men	women
NCC	NCC NWAC*	AFN	AFN NWAC	NCC	NCC NWAC	MNC	MNC NWAC	ITC	ITC NWAC IWA**

* NWAC is a unifying force among aboriginal women The organization does not operate on the basis of legal categories

** IWA = Inuit Women's Association, established in 1984

1.3 The Metis

The Metis are descendants of predominantly European fur traders and Indian women who emerged as a distinct group in the Canadian west in the early 19th century. Capitalized 'Metis' is used to describe a distinct collectivity of people descending from those who are recognized to have some form of aboriginal title in the Manitoba Act of 1870 as well as in the Dominion Lands Act of 1879.

The term 'Metis' is not a generic term for all persons of mixed

ancestry, but rather refers to a distinct sociocultural heritage, a means of ethnic self-identification, and a political and legal category (Brown, 1987, p. 136). Another term by which the Metis identify themselves is 'Historic Metis' in order to distinguish themselves from those who are of mixed ancestry but who cannot trace their ancestry to those who had aboriginal title to the land. The latter are referred to by the Historic Metis as either 'metis' or 'Pan Metis (cf. Adams, 1975 and 1985; Brown, 1980 and 1985, pp. 1124-1125; Peterson & Brown, 1985). Within the latter category we can also trace several non-status Indians who identified themselves as 'Metis'. However, when in 1985 Bill C-31 was introduced, thereby facilitating reinstatement of non-status Indians, many Pan Metis began to reclaim their Indian identity. On the other hand, several persons who had previously identified themselves as non-status Indians began to re-identify themselves as Historic Metis, ever since they were mentioned in the Constitution Act of 1982 (cf. Nicks, 1985). Their changing self-ascription may be an indication of a resurgence of pride in the Metis identity. As a result of the Constitution Act of 1982, and recognition of the (Historic) Metis as an aboriginal people, self-defined Metis criteria, such as Pan and Historic Metis, were established. Furthermore, the ethnic boundaries between non-status Indians and Pan Metis on the one hand, and Historic Metis on the other hand became stricter (see Figure 1.1)(9).

The evolving of the Historic Metis in Canada might be conceived as the product of fur trading activities and relations between Indians and Europeans. The Metis constitute a group of three collectivities that gradually merged: one that grew out of the French fur trading tradition, another that grew out of the British fur trading tradition, and yet a third grew out of the Indian fur trading tradition. Pre-eminently, the Metis are characterized by pluriformity of descent, way of life, socioeconomic circumstances, and degree of amalgamation into Canadian society. Gorham (1987, p. 49) argues that research on Metis identity should take into account a historical examination of the role of women. The symbolism of Metis motherhood is important since it is the Indian, as well as the Metis mother, who reflects both descent and homeland (cf. Brown, 1983; Van Kirk, 1972, 1980, and 1985).

The French were the first who traded furs with the Indians. From

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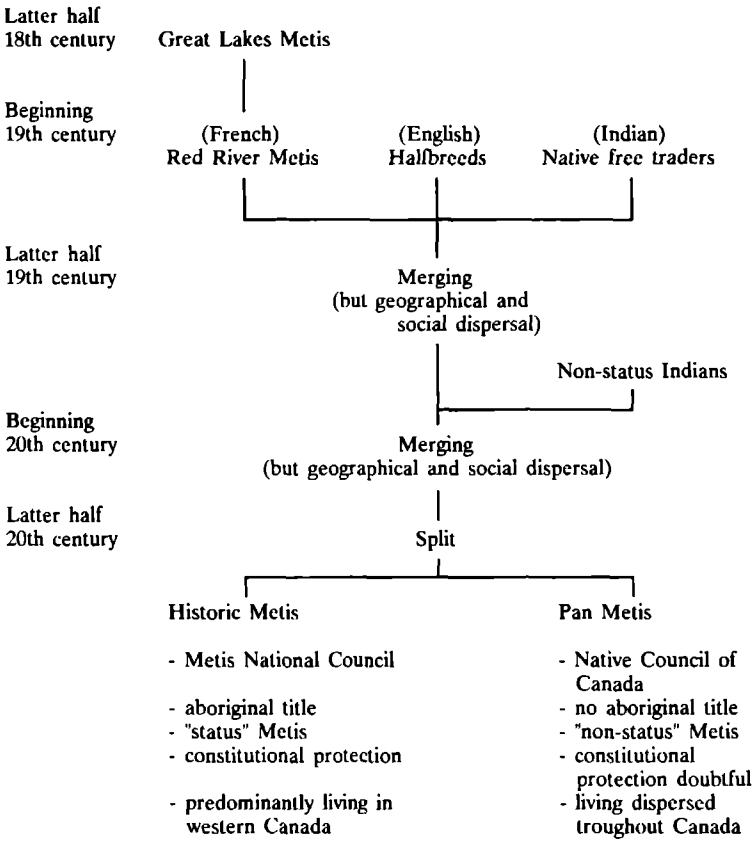
9) It is doubtful whether non-status Indians and Pan Metis will ever be able to have their aboriginal status and according rights recognized.

Figure 1.1 Who are the Metis? Changing definitions of Metis (self)indentity.



Source: Krosenbrink 1989a, p. 39

the beginning, the French colonial government encouraged liaisons between Frenchmen and Indian women. These were conceived to guarantee fur trading activities on the one hand, and assimilation of Indians into the French population on the other hand. However, many Frenchmen lived with Indian women in common-law unions

and often took the Indian way of life themselves. For this reason, the French colonial government began to discourage mixed unions as of the 18th century. This probably fostered the establishment of distinct communities around the Great Lakes, in which Frenchmen lived with their Indian wives and mixed-blood offspring. These communities were referred to by the French as 'Metis' communities. Men usually worked as broker-traders for fur trading companies, as free traders, as guides and interpreters and supplied the forts and posts. Their sources of livelihood were complemented by small-scale agriculture. The Metis led a semi-sedentary lifestyle. Characteristic were their annual buffalo hunting trips into the Red River district (southeastern Manitoba) which lasted a few months (10). The buffalo was the primary source in the production of pemmican, a staple food that was of utmost importance throughout the entire fur trading period.

The Metis communities over the years created a language and a moral and social order of their own in which both French Catholic traits and Indian cultural traits became significant features. When from the end of the 18th century onwards white settlers began to replace communities around the Great Lakes, many Metis moved to the Red River district. This collectivity of Metis created the core of culture around which contemporary Metis identify themselves, and through which they establish a historic link with the land (Foster, 1979, pp. 77-78).

The coming of white settlers into the Red River district since the beginning of the 19th century, and a Metis concentration in that area, gave rise to the development of a Metis self-awareness. At the time that the Canadian Confederation was established in 1867, there were approximately 10,000 Metis and 1,600 white settlers living in the Red River district (Martel, 1979, p. 32). In this figure are included the English Metis, who descended from Indian women and British fur traders and officers who were under contract of the Hudson's Bay Company. This Company referred to all Metis as 'Halfbreeds'. Particularly the French Metis gradually began to fear European settlement and encroachment of agricultural society that would be detrimental to their semi-sedentary lifestyle which was intertwined with their hunting and trading activities. When the Canadian government obtained absolute power over Rupert's Land, which was

10) According to Cox (1987, p. 118), the Metis buffalo hunting trips, in which entire families were involved and during which foodsharing activities were performed, made a large contribution to the group's cohesiveness and solidarity (cf Harrison, 1985 pp. 21-25).

ceded by the Hudson's Bay Company in 1869, the Metis were alarmed (INAC, 1980a, p 21) One of the Metis leaders, Louis Riel, established a Metis National Council and drafted a declaration of Metis rights. The consequent efforts of the Ottawa government to map the district without regard for the Metis land holdings was a direct cause to Riel's establishment of a provisional government of Manitoba (the former Red River district), and seizure of the Hudson's Bay Company headquarters at Fort Gary (Winnipeg) from the end of 1869 till the beginning of 1870. The Red River insurrection came to an end but not without promises from the federal government that Metis claims to land and political rights would be accommodated.

Within the Manitoba Act of 1870, it was stipulated that the Metis be granted 1 4 million acres of land Whereas Indian land title was extinguished through treaties, Metis land title was dealt with through the scrip system. The treaties provided for a communal land base, hunting and fishing rights, and certain annuities, plus a special legal status for Indians The scrip system, however, provided only for a land grant for individual Metis who were considered Canadian citizens without any special rights after they had received the scrip (Adams, 1985, p. 66, Chartier, 1985, p. 57; Taylor, 1983, pp. 155-156)(11).

During the 1870s dramatic changes took place in Manitoba. The province became a predominantly white settlers' society that based its livelihood on agriculture. The Metis population figure had decreased to not more than eight per cent in the province (Manitoba Metis Rights Assembly 1983, p 3). Many Metis had exchanged their land scrip for money scrip - or had lost their land through frauds - and moved further to the west and north where the fur trade was still a determining set of activities and where the buffalo were still abundant. The Metis who had left the province, thus French as well as English Metis, merged with the Metis who were living in the Saskatchewan and Alberta area. The latter were free traders who descended from Indian fathers from eastern Canada (e.g. the Iroquois) and Indian mothers from western Canada, whose liaisons emerged out of an Indian fur trading tradition. Although they were full-blood Indians they considered themselves Metis because they did

11) Only the Metis in Alberta have been granted a communal land base through the Alberta Metis Betterment Act of 1938 Whereas the Metis claim aboriginal land title over this land, the provincial government does not recognize this (cf Sawchuk et al , 1981)

not want to enter into treaty with the federal government (see Figure 1.1).

The Metis resumed their semi-sedentary lifestyle as long as the fur trade was still prosperous in that area In 1879 the Dominion Lands Act was introduced to satisfy Metis land claims in the Saskatchewan and Alberta region. When these land claims had still not been satisfied in 1885, at a time when white settlers were coming to the area in larger numbers, the Metis became alarmed for a second time. At Batoche, a Metis community in Saskatchewan, a Metis provisional government was proclaimed by Riel, but in May of that same year the Metis had to surrender to the Canadian armed troops (INAC, 1980a, pp. 22-23) Riel, who was hanged for treason in November 1885, became a symbol of Metis nationhood and his ideas about Metis land rights, self-governing institutions, and local Metis councils are reflected in the political mandate of the contemporary Metis National Council (MNC), established in 1983 (McNaught, 1982, pp 178-179; cf The Metis Nation, 1,1, 1984)(12). The Metis National Council consists of five provincial organizations: Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia.

After Riel's death, prime minister MacDonald declared that the Metis in Canada did not exist anymore as a distinct group: 'if they are Indians they go with the tribe; if they are halfbreeds they are white' (Brown, 1985, p. 1126)(13). Until 1982 - when the Historic Metis were constitutionally recognized as an aboriginal people with according rights - the Metis found it hard to maintain a positive self-identity (cf Sawchuk, 1985). As a matter of fact, many Metis have probably been assimilated into Canadian society at large and have either forgotten about their aboriginal identity or have remained silent about their background (Adams, 1975, p 203).

Today, there are more than 98,000 Historic Metis in Canada of which two-thirds live in the Prairie provinces. They are working towards their own unique place in Canadian society Since 1982, a Metis renaissance can be observed Individual Metis are reconstructing or rediscovering their cultural heritage and Metis

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12) The MNC split off from the NCC because the latter was preoccupied with the griefs and goals of non status Indians and the Pan Metis Whereas these categories of persons cannot claim aboriginal title, the Historic Metis can (see Table 1 1)

13) From 1867 till the 1970s, the federal government referred to the Metis as 'Halfbreeds' This term was replaced by 'Metis' because of its derogatory connotations Besides, 'Metis' is a self identifying term

community life is given new vitality. As the Manitoba Metis Rights Assembly (1983, p. 5) argues:

> 'Our Metis culture developed from a blend of Indian and European values and lifestyles. It still features commercial and domestic forms of living off the land; notably hunting, fishing, trapping, the gathering of wild rice, herbs, roots, and berries, and farming. It includes our socials, music, jigging, country food, art, religious beliefs, historical knowledge, and our mixture of mainly Cree, English, Ojibwa, and French languages. All of this is bound together by close family ties, a strong sense of community identity, and by our common struggles for land, better jobs, improved living conditions, self-reliance, dignity, and recognition as a nation'.

I have deliberately dwelt a bit longer on the subject of the Metis because Indians and Metis, as social categories, are sometimes difficult to distinguish from one another.

1.4 The Inuit

The Inuit comprise the dominant aboriginal population of Canada's northern state territory, known as the North West Territories, the Yukon Territory, and Labrador. The treeline forms a natural boundary between Indian and Inuit territory(14). Generally, the Inuit are divided into eight cultural and regional groupings that each have their own territory and lifestyle with respect to material life and way of subsistence (INAC, 1986b, p. 13).

The Inuit were a nomadic people who subsisted by primarily hunting land and sea mammals and by fishing. Social groups fluctuated seasonally from a nuclear family type to a band like type of organization. The household, as a rule, was the basic social unit which consisted of parents, children, adopted children and widowed relatives (Creery, 1983, p. 3; INAC, 1986b, p. 16; Remie, 1985, p. 40).

The Inuit world was a harsh one; climate and scarcity of natural

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14) The Inuit were previously referred to as 'Eskimos', which is a Cree term for 'raw meat eater'. For more general information on the Canadian Inuit, I refer to the Handbook of North American Indians, volume 5, 1984

resources could lead to starvation on a serious scale. Rules with respect to hunting, foodsharing, material goods, observation of taboos, marriage alliances, kinship, and spouse exchange were critical to the survival of the group, and their necessity was understood by each individual. The traditional Inuit mode of production was based on sexual division of labour. From an economic point of view, women and men were equal. Male and female interaction, however, was governed by the principle of male superiority since women were pressured harder to adjust to men, and since men were considered the primary food providers (IWA, 1984; SOS, 1975, p. 118; cf. Crowe, 1974).

Whereas south of the treeline the fur trade provided the main historical theme, the search for the northwest passage was that of the North. In 1576, Martin Frobisher explored the coast of Baffin Island, and in 1610 Henry Hudson continued the search for the northwest passage (INAC, 1985d, p. 10). Since the beginning of the 19th century European whalers had been fishing in the north of Canada, but contacts with the Inuit were mostly short-lived. Not before the beginning of the 20th century did the federal government show any interest in the North (cf. Zaslow, 1971). Thus, it is only since this century that the Inuit in general experienced changes that were brought about by what they refer to as the South. At the time when first contacts with whites were established, the Inuit population was estimated to be 25,000 (Armstrong et al., 1978, p. 73; Creery, 1983, p. 3).

The gradual imposition of southern law, together with fur trading activities with the Hudson's Bay Company and the effects of christianization have brought about changes in the Inuit's way of life since the beginning of the 20th century. In 1939 the Supreme Court decided in the 'Re Eskimos' case that the term 'Indians' in the British North America Act of 1867 included the Inuit as well, thus making them a federal responsibility. However, it took until after the Second World War before the federal government interfered politically with the North.

When the fur trade collapsed during the 1940s, many Hudson's Bay Company posts were closed. Combined with a serious scarcity of food resources, several Inuit groups were starving as a result. Federal government's interference, the Cold War between the Soviet Union and the U.S.A. (which resulted in the establishment of radar stations), and the search for natural resources to augment Canada's welfare dramatically affected Inuit self-government (Creery, 1983, p.

4; INAC, 1986b, p. 48). The Inuit were urged to leave their camps and to settle in Inuit communities where the federal government was better able to deliver services, such as health care and education. More than 700 Inuit camps were gathered into approximately 40 communities. The Inuit, who were not accustomed to a sedentary lifestyle, pursued and still pursue to combine wage labour (or welfare assistance) with hunting activities. The Inuit communities are incorporated into hamlets and each one of those is governed by an elected Inuit council. These councils, as is the case with Indian band councils, do not have self-governing political power (Alikatuktuk, 1974, p. 8; INAC, 1986b, p. 61).

Due to the expansion of activities by oil companies, a growing awareness of political issues, and their growing struggle for self-government, the Inuit organized themselves nationally in the Inuit Tapirisat of Canada (ITC) in 1971 (see Table 1.1). The constitutional branch of ITC is called the Inuit Committee on National Issues. Since 1987, however, the latter no longer exists.

Since the 1960s the Inuit population has been the fastest-growing population in Canada. Today there are approximately 35,000 Inuit (Armstrong et al. 1978, p. 101; Gottesman, 1985, p. 1212; Frideres 1985, p. 34; INAC, 1986b, p. 50). Although the proportion of white people is growing in the North, they are still a minority.

Inuit cultural persistence manifests itself in economic activities, in some social practices, and in the language.

Survival of the relatively new Inuit settlement communities and of Inuit culture itself owes a great deal to the Inuktitut language retention. The language is not only a cumulation of Inuit social life experiences but is also instrumental to the production of a sense of Inuit identity (Cox, 1987, pp. 221-222). Although the traditional lifestyle no longer prevails, hunting rules and norms are still alive. The younger Inuit, who have not experienced camp life and hunting as a way of life, nevertheless identify with traditional values, the land and its resources.

1.5 The aboriginal rights issue

By virtue of their aboriginal status, aboriginal peoples are ethnically different from all other ethnic segments of Canadian society (Asch, 1984, p. 7; Davies, 1985a, p. 25; Dyck, 1985, p. 236). Aboriginal rights are collective rights that derive from the long-term use and

occupancy of the land and its resources, referred to as 'aboriginal title'. Aboriginal rights refer to all those rights that are connected with aboriginal title, such as hunting and trapping rights, cultural rights, and political self-government rights (Elliott, 1985; Gormley, 1984, p. 30). Aboriginal rights imply that there are rights distinct from whatever rights European settlers had, and Canadian citizens have (Henderson, 1985, p. 222).

The British imperial government, from 1763, and later the Canadian federal government, from 1867, acknowledged aboriginal title. Therefore, any difficulties that aboriginal peoples encounter in establishing their aboriginal rights do not stem from a defect in colonial law, but rather in the implementation of these laws (Asch, 1984, pp. 41-42).

Legal instruments for recognition of aboriginal rights

The Royal Proclamation of 1763 is part of the Canadian Constitution Act of 1982. Within the Proclamation it was stipulated that aboriginal land title could only be extinguished by way of a treaty between the British Crown and the aboriginal peoples involved (cf. Slattery, 1985).

The British North America Act of 1867 is also a part of the present Constitution Act. The act of 1867 marks the establishment of Canada as a Confederation. Section 91(24) of the said act declared that exclusive legislative authority was given to the Canadian parliament in matters concerning 'Indians and lands reserved for Indians'. As already stated, the term 'Indians' includes the Inuit as well. This Act provided for the primary policy instrument used by the federal government in dealing with the aboriginal peoples: the Indian Act. From 1876 - when the Indian Act came into force - till the 1950s, aboriginal policy for the most part meant Indian policy (ibidem).

Section 35 of the Constitution Act of 1982 recognizes aboriginal peoples and their according (collective) rights. However, as long as 'aboriginal rights' is not given a substantive definition, the value of its appearance in the Constitution Act is merely symbolic.

Aboriginal rights are also subject to international law, including agreements between states and human rights (Barsh & Henderson, 1982, p. 55). The aboriginal peoples' claims to a distinct nationhood can be given moral and legal justification by international law since

the 16th century (cf. Davies, 1985a). Furthermore, it was not until 1960 that the Indians (and not until 1962 the Inuit) were proclaimed Canadian citizens and this consequently affirmed their conviction that they held different citizenship and nationhood (Little Bear et al., 1984, p. xv)(15).

Interpretations of aboriginal rights

Aboriginal rights cannot be solely defined in legal and constitutional terms. They refer to political, cultural, socioeconomic, and emotional aspects as well (cf. Muller-Wille, 1981). The federal government, however, perceives aboriginal rights primarily within a socioeconomic context. Prime Minister Trudeau's justification for acknowledging aboriginal rights (since 1978), in the first place was based on the inferior socioeconomic conditions of aboriginal peoples (Kato, 1986, p. 275; Weaver, 1983a, p. 90). Furthermore, the federal government conceives aboriginal rights as static rights and one and the same for all groups of aboriginal peoples (Henderson, 1985, p. 225; Morse, 1985, p. 13)(16).

The claims made with respect to aboriginal rights by respective national aboriginal organizations not only vary to a certain degree, but also depend on the attitude of the public, on the political will of the federal government, and also on the desires and perseverance of aboriginal leaders (cf. Berkhofer, 1978b, p. 191). The aboriginal peoples' claim to self-government - as an integrative concept of aboriginal rights - did not appear on their political agenda before the federal government had proposed to recognize aboriginal rights in the new Constitution Act. Thus, the constitutional process on aboriginal matters provided a significantly new context in which aboriginal peoples could express their concerns and participate in changing the future political relationship between aboriginal and non-aboriginal

15) The nature of Indian treaties appeared to have contributed to this conviction as well. The same goes for the enfranchisement regulations within the Indian Act (cf Robertson, 1970, pp. 122-123).

16) Although national aboriginal organizations are consistent in their claim that aboriginal self-government should be based on a land base and should reflect autonomy, there is a slight difference in the interpretation of the term This is primarily due to differing circumstances under which the status and non-status Indians, the Pan and Historic Metis, and the Inuit have lived and are living (cf Hawkes, 1985, pp 5-6).

Canadians.

As has been explained in the Introduction, the Native Women's Association of Canada takes a distinct stand on the matter of aboriginal rights. It appears to be preoccupied with safeguarding an equal distribution of aboriginal rights - including self-government - among the sexes rather than with defining aboriginal rights itself. The reasons for NWAC's political choice are closely related to the Indian Act status regulations and their implications for women in particular. This will be further explored in chapter two.

1.6 Aboriginal organizations and government relations

The special relationship between the federal government and the aboriginal peoples is a permanent one. The most important avenue of interaction has always been in the realm of politics (Rogers, 1971, p. 339). The political structure in Canada, as in many other countries, is determined by the following factors: competition for valued ends is controlled within the political community; the political elite are those who are entitled to compete; and rules specify how those who are active within the political community should organize themselves (cf. Bailey, 1977, p. 23).

Since the 1960s, aboriginal leaders have begun to use government techniques and make demands through means that Canadian society at large could understand (cf. Patterson, 1972, p. 175; see also chapters 3.1 and 5.1). As a result, aboriginal protests began to be heard. Democratic governments tend to have difficulty dealing with unorganized sectors of the public. Therefore, the federal government began to stimulate the establishment of national aboriginal organizations as vehicles for political communication. From the early 1970s onward, national aboriginal organizations play a vital part in articulating the aboriginal peoples' interests vis-a-vis Canadian society at large. Particularly the national aboriginal leaders are important; they have the potential to establish themselves as political actors in an arena from which aboriginal peoples are otherwise excluded. By taking positions on political issues, and by adopting symbolic stands, aboriginal issues are made known (Dyck, 1985, p. 240).

National aboriginal organizations are financially dependent on the federal government through Core and Project funding (SOS, 1983, pp. 4-5 and 1985, pp. 1-2). In order for these organizations to

receive financial support, they have to work with the democratic majority system. Furthermore, the federal government can show its disapprobation of the aboriginal organizations' political goals by cutting funds or programmes and services that are delivered to aboriginal peoples through national organizations (Dyck, 1981, p. 284; Weaver, 1983b, p. 5). As a consequence, aboriginal leaders find themselves sometimes in a paradoxal situation. They are put in a position by the federal government, they have to 'play the game' by the political rules that the federal government has set. And yet, they have to compete with that same government. For that reason, they may not always be trusted by those whom the aboriginal leaders represent, and are sometimes referred to as 'the hidden hand of government oppression' (Adams, 1975, pp. 181-184 and p. 208; cf. Berkhofer, 1978a; Krosenbrink, 1983, p. 42)(17).

The federal government's power over national aboriginal organizations should nevertheless not be overestimated. Not only aboriginal organizations, but the federal government finds itself in a dilemma; without sufficient funds aboriginal organizations cannot be effective in political negotiations, but with too many funds, these organizations may become powerful (Weaver, 1983b, p. 5). Furthermore, national aboriginal organizations receive monies from various government agencies, rather than from a single source.

Although the federal government has a significant measure of power in (not) recognizing aboriginal organizations and in (not) providing funding, it cannot provide aboriginal organizations with leadership or with legitimacy from the perspective of their constituencies (Weaver, 1983b, pp. 9-10 and p. 44). Weaver (1985c, p. 126), who has over the years produced a number of publications on aboriginal organizations and federal government relations, argues that no evidence can be found that the unequal power balance has compromised national aboriginal organizations' positions on political issues (18). As the main arguments in this study develop, the reader should bear in mind that I conceive aboriginal organizations' political claims as their own, irrespective of the above mentioned.

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17) See also. Anderson & Frideres, 1981, p. 196; Barsh & Henderson, 1980, pp. 251-252; Boldt, 1980, p 21, Tanner, 1983, p. 31).

18) Lithman (1984a, p.91) goes even further by claiming that relations between the federal government and aboriginal organizations reflect a fairly equal power balance. According to him, in a status negotiable interaction, the 'dominance versus submission' tenor is lacking because both parties recognize that they have effective means to sanction each other.

> '(...) the Indian Act reflected the narrow views of the governors rather than the broader views of the governed, in this case the Indians' (Cheda, 1977, p. 201).

> 'What better way is there to destroy a people than to take away the rights of women' (Aggamaway, 1983, p. 66).

This chapter deals with perspectives on the Indian women's positions within their traditional societies. Perceptions of women by 19th century colonial society prove to have had a significant impact on the legal status implications in the Indian Act, particularly as they pertain to Indian women. These perceptions will be compared with contemporary perceptions of the Indian women's traditional positions by Indian informants themselves, as well as by social scientists. Indian informants' statements may illustrate their perceptions of the Indian Act and its implications as well.

Until the 1950s aboriginal policy for the most part meant Indian policy. I will describe the development of the Indian Act from the 1850s until the 1950s. The Indian Act has been, and still is, one of the most outstanding manifestations of colonial policy regulations pertaining to Canada's aboriginal peoples. The evolution of the Native Women's Association of Canada (NWAC) as a separate organization cannot be properly conceived without taking into account the development of the Indian Act, its effects on the relationship between Indian men and women, and its consequences for the Indian women's sociolegal position, both within society at large and in their own communities.

2.1 Perspectives on traditional positions of Indian women

Statements on or perceptions of the sociopolitical positions of Indian women within their pre-colonial societies are significant. They are always related to the ideological framework of the cultures in which respective persons or groups of persons originate.

Primary source material on the aboriginal women's positions, and particularly those of Indian women, is sparse and difficult to find. Indian women were rarely, if ever, included in the information

mainstream. Furthermore, since most data from early observers appeared to be preconditioned by European (male) assumptions, it is not an easy task to separate valid interpretations from false ones (cf. Albers, 1983a, p. 7). Moreover, it is virtually impossible to differentiate between aboriginal traditions that predated colonization, and those that took shape in a colonial context (cf. Etienne & Leacock, 1980, p. v). What has often been described by both outsiders and aboriginal informants as 'traditional' or 'authentic' is probably 'transitional'. The latter refers to a historical period in which Indian nations (at least in part) were already engaged in fur trading activities with Europeans (1). For example, Prairie Indian culture, which speaks so much to our European stereotypical imagination, took shape in response to contact with Europeans. Rifles, guns, and horses are not traditional, although nowadays they are conceived as traditional characteristics of Prairie Indian culture. Thus, many features of traditional Indian cultures probably took shape in response to culture contact with Europeans.

How 19th century observers perceived Indian women's traditional positions

Stereotypical images of Indian women appear to have developed during the fur trade period. Through interviews with non-aboriginal persons I found that these images have a tendency to persist in the minds of many outsiders even today.

Early observers - from traders, missionaries, explorers, and historians to anthropologists - reached a remarkable consensus in their accounts of the Indian women's positions within their respective cultures. Statements were to a large degree preconditioned by observations of Plains and Prairie Indian cultures. Irrespective of recognized cultural variations it was assumed that Indian women's positions were fundamentally the same, based on the similarity of their domestic roles as gatherer, planter, cook, tailor, home builder, mother, and child carer. Indian women were largely portrayed as slaves and beasts of burden (cf. Bataille & Mullen, 1984; Cheda,

1) Because of the fur trade and through the intermediary role of the Indians in eastern Canada, Indian nations in northwestern Canada had already had contact with European material culture before having met any Europeans This particular period is referred to as the proto contact period

1977, p. 195; Weist, 1983, p. 31).

The predominant 'squaw drudge' idea was typical of the fur trade period and can be accounted for by a number of reasons. According to Smits (1982, pp. 281-282), the squaw drudge idea was a rationalization of European hegemony over Indians. Indian women's subordinated positions served as an indicator for Indian people's primitive cultures. Weist (1983, p. 40) describes how European observers applied the same beast of burden rhetoric to African women as a legitimation of European colonial expansion.

Whenever Indian women did play important roles or occupied significant sociopolitical positions, such as among the Iroquois, they were portrayed as either princesses or supersquaws, thereby giving notice of their exceptional positions (2). Several observers recognized the Indian women's significant role in the fur trade with Europeans but they did not relate it to an evaluation of the Indian women's internal positions in their respective cultures (3). It appears that beyond the domestic activities of Indian women, hardly any statements were made (Powers, 1988, p. 350). Their invisibility in other spheres of life perpetuated the myth that what women did was less important and less noteworthy (cf. Seager & Olson, 1986, p. 9).

Most Indian cultures were described as hunting and gathering societies in which the 'man the hunter' hypothesis was assigned centrality (cf. Reiter, 1975). Women's work was described as peripheral and boring. Patri-organization was perceived as a dominant set of social organization of hunting and gathering societies and was used as a justification of the dominance of male economic activities and the ultimate power of Indian men (cf. Steward, 1955, p. 125). While hunting and trapping activities were already geared to the fur trade with Europeans and incorporated in the capitalist market economy, women's gathering and horticultural activities remained within the context of subsistence economy and were therefore perceived of as primitive (Aalten, 1979, p. 67; Joy, 1984, pp. 104-106; Smits, 1982, p. 285).

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2) The Iroquois women's political power was institutionalized and could therefore not be denied (cf Aalten, 1979 and 1986, Richards, 1974, Schumacher, 1972)

3) Several Indian and Metis women were allied to European traders and were portrayed as 'petticoat politicians', which may be an indication of their relative power (Van Kirk, 1972, p 10). Their significant roles at fur trading posts as well as on trading expeditions was recognized by the Hudson's Bay Company but was largely neglected in its records (Jamieson, 1978, p 17)

19th century observers were predominantly male, exclusively using male informants and as a consequence, women's status was deduced from men's status instead of being portrayed autonomously (Albers, 1983b, p. 183). As Begler (1978, p. 573) argues:

> 'When anthropologists approach the study of the relations of the sexes in terms of prestige or relative status, we usually end up applying our own evaluations of particular activities (...). I venture to say that if men in our society were traditionally responsible for raising children, we would measure the status of women in other societies by the degree to which they were allowed to participate in child care and education'.

The 19th century observers were largely viricentric in their assumption that male dominance existed in Indian cultures and ethnocentric in their evaluation of gender relations, based on European notions of femaleness (Bataille & Mullen, 1984; Joy, 1984, pp. 101-102; Quinn, 1977, p. 183). Theoretical frameworks that were used were ahistoric and were nurtured by 19th century European ideology (Krosenbrink, 1984b, pp. 20-21). At that time, European society, and particularly English society, was already engaged in the process of industrialization accompanied by a growing dichotomization between productive and domestic work, in which women were gradually withdrawn from the production process. The universal truths of women's lives, childbirth and motherhood, were used to define women's status and to justify their domestic place.

Women's studies and perspectives on Indian women's traditional positions

Since the late 1960s, 'women's studies' as an academic (sub)discipline developed. It resulted in a growing number of publications on the sociopolitical positions of women cross-culturally, challenging basic tenets and theories as well as the reliability and objectivity of traditional anthropological data and methods (cf. Aaby, 1977; Mukhopadhyay & Higgins, 1988; Reiter, 1975; Silverblatt, 1988, p. 429). Martin and Voorhies (1975, p. 1) contest: 'The recent sense of urgency to examine female roles anew is attributable not only to the swelling rank of female anthropologists, but also to the growing sophistication of anthropology as a science'. Despite the fact

that the amount of literature pertaining to women of the Fourth World is still relatively small, the development of women's studies has involved a re-evaluation of traditional ethnographies everywhere.

In contrast to traditional observers, feminist observers argue that generalizations regarding traditional positions of Indian women in Canada are hardly possible to make. Furthermore, in contrast to the 19th century observers, there is no consensus among them with respect to Indian women's traditional positions (cf. Brodribb, 1984). They stress that women's positions cannot be deduced from a single set of activities (e.g. domestic activities) but are made up of a multitude of variables so that in one area their position may be high while in another it is low (cf. Quinn, 1977). Sanday (1981, p. 128) argues that there is no society where women and men are equal in all domains at the same time. She bases her argument on the universal existence of sexual division of labour. Therefore, women's positions should be deduced from the degree of female control over production and reproduction, the degree of their participation in decision-making processes, and from the existence of female solidarity groups devoted to political and economic interests. She argues further that whereas ascribed roles of women may be reflected in religion, myths, and legends, this is not the case with women's achieved roles (cf. Aaby, 1977; Begler, 1978).

Thus, differing perspectives on the positions of Indian women in their respective cultures is not a matter of right or wrong but is dependent on the themes and the historical period that the authors focus on such as: motherhood, social organization, religion, economics, politics, the pre-contact period or the fur trade period. Also, the symbolic identification of gender may change over time and is not fixed even when references are made to traditional cultures (Mukhopadhyay & Higgins, 1988, p. 479). However, if there is some consensus in Women's Studies, then it is about the general decline of the Indian women's sociopolitical position due to the historical pattern of religious, economic, and political intervention of the colonial power and the formation of the Canadian state (4).

Although there is general agreement on the existence of a system of sex labour division in hunting and gathering societies, the 'man the hunter' hypothesis was gradually demystified (cf. Dahlberg, 1981; Reiter, 1975). Traditional observers failed to recognize the significant

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4) Cf. Aalten, 1979, p. 67; Etienne & Leacock, 1980; Klein, 1983; Rohrlich, 1975, pp. 619-624; and, Sandoz, 1961.

economic roles of women and therefore did not recognize the important share of women in the food production (sometimes as high as 80%). Furthermore, in several Indian cultures women hunted as well. Some authors argue that men and women were equally important since their economic activities were complementary and because men as well as women remained in control over their own produce (5).

Hunting and gathering societies appear to reveal great variety in social organization rather than being dominated by a patri-system. Whereas in matrilineal and matrilocal societies women's positions are usually higher, their positions in patri-organized Indian cultures may vary greatly. It is argued that there is no interconnection between dominant economic activities of one sex and a particular social organization (Martin & Voorhies, 1975; Sanday, 1981)(6). Sanders (1975b, p. 656) argues that among northern subarctic hunting and gathering bands, where hunting was a dominant set of economic activities performed by men and where women were economically dependent, women were not barred from decision-making processes. A reason for this might be that in most hunting and gathering Indian societies in Canada no institutionalized system of chieftainship existed by tradition, meaning an institution which places authority over others in one person. Political decisions, rather, were made collectively (Quinn, 1977, p. 198; Wolf, 1982, p. 166).

Feminist scholars argue that although in almost all cultures dichotomies may be perceived between public and domestic and between production and reproduction, it does not mean that they are evaluated the same way everywhere (cf. MacCormack, 1980). The production-reproduction dichotomy in the capitalist mode of production, such as in European society, does not have to be the same as the dichotomy between production and reproduction in traditional Indian cultures (Aalten, 1979, p. 64; Krosenbrink, 1985b, p. 59; Mukhopadhyay & Higgins, 1988, p. 481; Reiter, 1975, pp. 12-15). It appears that reproduction and production were equally evaluated in traditional Indian subsistence economies. In cultures where continuity of the group is highly valued, rather than the

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5) Cf. Aalten, 1986, p. 47; Clerici, 1981; Krosenbrink, 1984b, pp. 65-66 and 1985a; Lee & Devore, 1968, pp. 7-8; Niethammer, 1977, Slocum, 1975.

6) The Northwest coast Tlingit were patri-organized but women performed authority roles as chiefs (Klein, 1976, pp. 175-177).

individual as centre of the web of social organization, women's reproduction and fertility are considered important (Harris & Young, 1981, p. 138). It is a Marxist prejudice to emphasize production over reproduction. Indian women appeared to be in control of biological reproduction and participated actively in the reproduction of labour and of social formations.

With respect to the domestic-public dichotomy, Klein (1976, p. 179) argues: 'To define something as domestic or "supra domestic" just because women are involved seems to support artificially a domestic female, public male dichotomy'. Furthermore, according to feminist scholars, there is only an apparent universality of women's domestic work. 'Domestic' is not always considered inferior to 'public', or devalued. Likewise, motherhood is not always a constraining factor in women's active participation in society and there is no relation between women's biology and their sociopolitical positions (Harris & Young, 1981, p. 131; cf. Oakley, 1972). Thus, to view women's authority and power domestically as unequal, instead of equal but different from men is a Eurocentric projection (7). O'Meara (1986, p. 57) claims that where Indian men held public authority, Indian women had power (cf. Cameron, 1981; Hungry Wolf, 1980; Terrell & Terrell, 1974). According to Webster (1975), matriarchy is the only vision social scientists have of a society where women have power. In other words, it is hard to recognize women's power in other organizations. Power is defined as the ability to act effectively on persons or things to take or to secure favourable decisions (Sanday, 1981, p. 117).

As far as the positions of Indian women during the fur trade period are concerned, there is also no consensus among feminist scholars. Several of them argue that the Indian women's roles were important to both fur traders and other Indians (despite degrading perceptions), and that these should be perceived as a continuation of their traditional roles and positions. Indian women acted as translators, peace makers, providers, explorers, guides and home makers during the fur trade period. In their alliances with European traders, Indian (and Metis) women contributed significantly to the

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7) Deloria (1944) lived among the Teton and Yankton Sioux for longer periods of time (her father was a missionary) She argues that Indian men and women had their own place in society, and that their respective positions were different but neither inferior nor superior to one another.

prosperity of the Indian and European nations (8).

Littlefield (1987) describes the role and position of Haida, Tlingit, Tsimshian, Nootka and Chinook women during the fur trade period. She argues that their roles were related to their part in the Indian mode of production. According to her, gender-related rights of disposal over produce made the Indian women's participation in the fur trade necessary. Grumet (1980) goes even further by describing how Algonkin women controlled the fur trade with Europeans.

Other authors are not certain whether the fur trade degraded, upgraded or left the Indian women's positions within their respective communities unchanged. Both Joy (1984, p. 110) and Perry (1979, p. 368) suggest that it may be possible that within traditional Indian cultures the symbolic meaning of femaleness may have provided an ideological framework for the relative low status of women. They do not presume that all traditional Indian cultures were egalitarian. However, they claim that this development cannot be understood without references to the effect of European contact. Furthermore, Perry (1979, pp. 363-364) states in his study on the traditional positions of western subarctic Indian women that their perceived depressed status was only attributed to certain groups and probably also limited to certain time frames, but sometimes resulting from the fur trade (9). Perry points out that Indian women's traditional positions, as well as those during the fur trade, differed greatly from one Indian nation or band to another. He suggests that a high degree of historical particularist research is necessary in order to assess critically Indian women's positions within their own cultures. However, together with Witt (1974) and Heard (1973) he assumes that the traditional lifestyles of many Indian women probably exhibited more personal autonomy than 19th century observers have recognized.

As mentioned before, most authors within the field of women's studies agree upon the notion that contact with Europeans degraded the Indian women's traditional positions. The general argument is that through the fur trade, and with the introduction of the capitalist

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8) Cf. Campbell, 1954; Keeshig, 1981, p 53, Krosenbrink, 1984b, pp. 23-24 and 1985b, pp. 60-61; O'Meara, 1968, Van Kirk, 1972, pp 4-5, 1980 and 1982

9) For example, the Chipewyan, Dogrib and Slave are culturally as well as linguistically related. However, there appear to be great differences in the positions of women within their respective communities. Since these differences cannot be comprehended from a cultural perspective, it should be assessed from a historical perspective (cf Perry, 1979).

mode of production, Indian women gradually lost control over their own produce and became more economically dependent on their Indian husbands and on European traders. Moreover, the missionaries made serious efforts to change Indian gender relations. Women's obedience and men's sexual rights over women were gradually imposed in the Indian systems (cf. Cameron, 1981; Etienne & Leacock, 1980, pp. v-vi; Fiske, 1987, p. 186; Leacock, 1978, and 1980, pp. 25-42, 1981, and 1983; SOS, 1975, pp. 60-61)(10).

Aboriginal informants and their perceptions of women' traditional positions

Perspectives of Indian women's traditional positions by feminist scholars appear to largely affirm aboriginal informants' contemporary views. In how far their statements are shaped by historical experiences, such as the development of the Indian Act and internalization of inherent western notions of femaleness, or by new perspectives within women's studies is difficult to assess (cf. Powers, 1988). An academic affirmation of the Indian (Metis and Inuit) women's traditional important positions may have a positive effect on the bargaining position of aboriginal women's political organizations.

According to Wright (1988, p. 366), anthropological theories may well have made significant contributions to the formulation of relevant perspectives, to guidelines for policies of aboriginal peoples' struggles, and to their political organizations. However, hardly any research has been conducted on this subject matter. Moreover, we have to take into consideration that significant changes within a culture may affect evaluations of that culture's past. The symbolic identification of gender may change over time. In other words, we will never be able to assess critically whether contemporary statements on the Indian women's traditional positions comply with historic reality, but we should not ignore that this may be the case. Nevertheless:

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10) Some authors have studied the political resistance of Indian women against the intrusion of missionaries and other European elements in their cultures and used it as an indicator for women's positions within their communities MacCormack (1976) and Rothenberg (1980), for instance, studied the Seneca women's resistance against colonial influences in order to continue their traditional power and control.

'It is important to understand indigenous images of women. The interplay of images, perceptions, beliefs, and resultant actions on the part of both genders are significant features for the comprehension of Indian women's roles in contemporary society' (Medicine, 1983, p. 63).

Perceptions on women's traditional positions may have a strong impact on aboriginal women's contemporary political struggles and may provide ideological support for their political plight. In agreement with Medicine (1983), I have come to the conclusion that aboriginal notions of women's nature and their positions in respective traditional cultures are used as a source of pride and as functional mechanism for the aboriginal peoples' group cohesiveness nowadays. As we will see, statements on 'motherhood'- this is a key concept - among both Indian, Metis and Inuit men and women are strikingly unanimous. First, I will describe aboriginal informants' statements on traditional women's positions. Secondly, I will deal with critical statements by aboriginal informants that refer also to changes of Indian women's positions.

Robinson & Quinney (1985, p. 10) link women's traditional positions to their nature: 'In all Indian Nations the ultimate Leaders are the women for they are the strongest and the most like Mother Earth'. While collecting and comparing aboriginal informants' statements on women's traditional positions, I could not escape the impression that women are perceived as caretakers of the biological as well as the cultural continuation of their respective societies. Women were, and still are, primarily responsible for transmitting cultural norms and values to future generations, to which they give birth. Childbearing is the Indian women's part in the biological and social reproduction of Indian nations. Life itself may be a strategic source in the survival of the group and, according to informants, women obtained power and prestige as a result of their control in this domain. During the reserve period, biological and cultural survival of the group became an even more important theme since it provided an instrument of resistance against colonial oppression.

Mead (1932), Kidwell (1978, p. 120), and Medicine (1983, p. 65) argue that women's positions were even upgraded during the reserve period. Their persisting motherhood tasks, against the background of the vanishing of men's traditional roles, became the centre of Indian culture. Several informants pointed out to me that Indian families by

tradition, and irrespective of cultural differences, were matri-focal. Men's traditional roles obliged them to stay away from home for longer periods of time. Thus, it was the women who kept the family together and who kept things going within the community. During the reserve period this situation did not change, since many men were obliged to seek jobs outside the reserve.

Men are said to be aware of women's power due to their motherhood. Even in societies where women did have a relatively lower status, they could always look forward to respect from the men and to certain privileges. According to an Assiniboine informant of Steiner (1968, pp. 215-216), women were leaders by virtue of their existence as the core of the kinship family. And as an informant of Lurie (cited in: Clerici (1981, p. 181) reported: 'If great-grandma ever really walked three paces behind great-grandpa, she was telling him where to go'. This argument was to prove women's political power against the background of men's institutionalized chieftainship. Thus, according to aboriginal informants, traditional (and contemporary) roles of Indian women as mothers appear to have provided women with power, irrespective of their different positions.

Studies have been undertaken, pointing to the danger of a motherhood ideology as sole fundament of women's positions. This ideology can be used to bind women to nature and to prevent them from equal participation in society (cf. Lowe & Hubbard, 1983; Oakley, 1986, p. 127). The argument is that motherhood is a burden, something that limits women's productive activity. According to many theorists, women's lower status is therefore frequently based on motherhood. In the industrialized world, successful adulthood does not require family membership nor perpetuation of the family unit. In view of this, Dahlberg (1981, pp. 20-24) argues that it is hard to recognize that in other cultures motherhood can be a source of pride, honour, and self-esteem. One informant (interview 26/1/86) was aware of the different, and even contradictory, conceptions of motherhood 'in white and Indian cultures'. She commented that this could be attributed to different conceptions of 'difference' and 'equality versus inequality' in both cultures. In the Indian conception, according to her, things can be different and still equal, whereas in white culture difference is connoted with inequality (cf. also Wallach, 1989). She claimed that Indian women's traditional positions were different from those of men but were evaluated as equal because they were not measured by male standards, but by female standards.

Another informant referred to the difficulty in assessing whether aboriginal perceptions of Indian women's traditional positions do comply with historic reality. She claims that: 'People don't want to believe that in our ways the women are the centre of everything. Europeans never paid any attention to our traditions. Europeans didn't recognize their own women, let alone aboriginal women' (interview 23/9/85)(11). This informant criticized the fact that what cannot be academically proved is often denounced as 'myth' by the industrialized world. A male informant added: 'Aboriginal women do have power based on their motherhood, but it's subtle, it's not public, not in the newspapers. It's within the core of the family' (interview 5/12/85).

To all female aboriginal informants, being a mother or once having children was a self-evident fact of life. However, the motherhood concept does not solely concern biological motherhood. It should be comprehended as a cultural construction of gender, and specifically of femaleness. A positive conception of femaleness does not automatically entail men's and women's equality, but it certainly contributes to women's (self)esteem.

I have also collected statements from informants who claim that Indian (as well as Metis and Inuit) women's traditional positions significantly degraded as a result of the impact of colonial intrusion: 'The white men who brought modern material objects also brought a different sexual attitude toward (Inuit, LK) women' (Alikatuktuk, 1974, p. 10; see also Matthiasson, 1976). And further: 'The despoliation of our (Indian, LK) women by unthinking, unfeeling selfindulgent whites stands as the most degrading insult inflicted upon our people' (Cardinal, 1969, p. 77).

With respect to the impact of christianization, it was often stated that the missionaries prohibited the existence of women's societies, tried to destroy matri-organization, and degraded women to the status of sinful creatures. With respect to education it was mentioned that women's roles as transmitters of cultures, at least in part, was taken

11) A Sami informant explained to me that the traditional motherhood concept, as illustration of women's equal status to men within their respective societies, is shared among all indigenous peoples within the Fourth World (interview 30/1/86).

away from them (12). Women could not teach values and knowledge to the younger generation by way of role modelling.

Many informants referred to the Indian Act as one of the most important sources through which women's positions within their own communities changed dramatically. With respect to the legal status regulations, it was stated that it firmly buttressed existing codes and superimposed sex role behaviour of a European type.

2.2 Development of the Indian Act

In the 19th century, colonial expansion to the west was at full height. The British Crown wanted to incorporate the western territories as quickly as possible before the U.S.A. annexed them or before these territories claimed independence (Krosenbrink, 1984b, pp. 28-29; Roosens, 1983, pp. 9-10). In the territories where the fur trade gradually decreased in importance - in particular in Upper Canada (west of the Ottawa River, Ontario) and Lower Canada (Quebec) - and where white settlement was stimulated, the Indians and their occupation of the territory were found to be troublesome. When the colonial government began treaty negotiations with the Indians in the 19th century, the status quo between the two parties had already ended (Milloy, 1983, p. 56). The Indians who had become economically dependent on the colonial government and who were encroached by white settlement were left no other choice than to sign a treaty. Despite the obligation of both parties to adhere to the treaty 'as long as the sun shines and the rivers flow', the British Crown (and later the federal government) perceived it as a temporary measure while the Indians perceived the treaty as eternal. Reserves, which were a direct outcome of the treaty policy, represented a homeland concept to the Indians and provided the core of Indian (self)identity (Roosens, 1986, p. 72).

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12) European education began as early as the 1600s with the Jesuits. Protestant missionaries followed in the late 1700s After the Second World War the federal government, in cooperation with provincial governments, took care of Indian education The residential school system that existed from the 1830s until 1969 was a thorn in the flesh of Indian people (McCue, 1985, p. 1213). It prevented children from being brought up in their own cultural environment The Metis were perceived as ordinary citizens and therefore received provincial education from 1867 onward Since the 1950s, the federal government has taken care of the Inuit education Previously, sporadic missionary schools existed in the North, particularly in Labrador.

Between 1812-1830 attitudes toward Indians changed. They were not perceived anymore as significant military allies, their economic role disappeared, and the fur trade was gradually replaced by agricultural settlement (Jamieson, 1978, p. 19). Until 1850 no colonial legislation existed to protect Indian lands per se. However, when white settlement was stimulated by issuing free homesteads to European immigrants it was felt necessary to protect Indians and their lands until land rights were settled by treaty negotiation. Since alliances between Indian women and European traders had resulted in successive generations where racial distinctions became blurred, it was felt necessary to define and classify Indians for they were the only persons who could rightfully live on Indian lands.

In 1850, 'An Act for the better protection of the Lands and Property of Indians in Lower Canada' held a noteworthy provision with respect to Indian identity. The following persons were considered Indians: firstly, all persons of Indian blood and their descendants who belonged to a particular Indian band; secondly, those who were not Indians but married to Indians and residing amongst them; thirdly, all persons whose parents on either side were Indians; and fourthly, all persons adopted in infancy by Indians and who were residing amongst them, including their offspring (INAC, 1978, pp. 23-24)(13). This definition set a precedent for later legislation.

The 1850 act was largely based on individual self-identification, on in-group acceptance, and on the way of life of persons involved. However, a year later an amendment was made to that act. Non-Indian males who were married to Indian females were excluded from legal status as Indians (INAC, 1978, p. 25)(14). Furthermore, in 1857, the 'Enfranchisement and Gradual Civilization Act' was established. It was the intention of the British Crown to put aside all legal distinctions between Indians and other citizens. Therefore, Indians had to adopt civilization. All male Indians over the age of 21 years, able to speak, read and write in English or French, with an elementary school education, of good moral character and free of debt were no longer deemed Indians within the meaning of the law.

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13) Note that the term 'band' has two significations. In general, it refers a type of group formation often mentioned in anthropological literature. Within the context of the Indian Act, 'band' legally refers to a group of status Indians living on land that is reserved for them (IA, 1970, p 4249)

14) This law was abandoned in 1857, but reintroduced in 1867 (Roosens, 1983, pp. 52-53).

Wives and minor children were automatically enfranchised with, respectively, their husbands and fathers. A penalty of six months imprisonment was imposed on any Indian person who falsely claimed to be enfranchised. The act of 1857 reflected the imperialist conception that it was good to interfere with the lives of colonial subjects and to foster civilization. Enfranchised persons were removed from the reserve in the sense that they were given a fee simple of reserve land, and they were put as an example of civilization to other Indians (INAC, 1978, pp. 26-28; Milloy, 1983, pp. 58-59; Roosens, 1983, p. 11). Thus, enfranchisement was perceived by the colonial power as a reward for those who were willing to adopt the lifestyle and customs of so-called civilized citizens. However, for the children of enfranchised parents the act had serious repercussions. They often lived in a blatant contradiction; although they were (perhaps) full-blood Indians they were denied the right to live in an Indian community (Morse, 1985, p. 2).

In 1867, the Canadian Dominion was established and through section 91(24) of the British North America Act the federal government obtained legislative authority over Indians and lands reserved for them. An act of 1869 was the first Canadian statute governing the status of Indian women.

Clause VI of the consolidated Lands and Enfranchisement Act stipulated that Indian women (and their offspring) who married Indian males from other bands became members of the latter and, more importantly, that Indian females (and their descendants) who married Indian males not legally recognized were not considered Indians anymore (INAC, 1978, pp. 51-54; Krosenbrink, 1984b, p. 30)(15). Jamieson (1978, p.1) summarizes the consequences of clause VI:

> 'The woman, on marriage, must leave her parents' home and her reserve. She may not own property on the reserve and must dispose of any property she does hold. She may be prevented from inheriting property left to her by her parents. She cannot take any further part in band business. Her children

15) Indian women who lost their status were given a forfeitary sum, evaluating 10 to 20 years of the annual income and revenues of the band from which they originated However, since it was the federal government that controlled the forfeitary sum and since it appeared that not all revenues were included there were many frauds (cf IA, 1970, section 15, Jamieson 1978, pp. 43-44, p. 93, Roosens, 1983, pp 19-20)

are not recognized as Indian and are therefore denied access to cultural and social amenities of the Indian community. And most punitive of all, she may be prevented from returning to live with her family on the reserve, even if she is in dire need, very ill, a widow, divorced or separated. Finally, her body may not be buried on the reserve with those of her forebears'.

If the Indian woman divorced her husband or became a widow, this did not affect her legal status. Only through re-marriage with a status Indian man was she able to retain her Indian status. One of the reasons that clause VI was established was the difficulty government officials had with the registration of Indians. The federal government required a one-fourth Indian blood quotum at least for those who were considered Indians but this was too difficult a category. In correspondence with the European system, therefore, it was regulated that Indian ethnic belongingness should be established through the male line of descendance (Roosens, 1983, p. 14 and 1986, pp. 42-43).

In 1869, it was also stipulated that only Indian males had voting rights in band politics. Traditional Indian political institutions were replaced by a European democratic type of government. Indian chieftainship was institutionalized and chiefs had to back up the colonial regime (Adams, 1985, p. 62; Leacock, 1983, p. 117; cf. IA, 1970, section 74). Thus, Indian women were barred from local Indian politics (16).

One may ask why the act of 1869 changed the Indian ethnic classification criteria from primarily self-identification to patri-organization and imposed sex discrimination. The need to make legal status distinctions does not automatically determine the criteria used. Thus, we have to look for reasons that fit within the historical framework. First of all, during the 19th century there was a firm belief in the progress and hegemony of European civilization (Jamieson, 1978, p. 31). Aboriginal peoples all over the world were considered unable to meet their own needs and to make their own political decisions. It followed that the colonial power was to control

16) Political discussions on federal voting rights for male Indians have been going on since 1869 However, severe barriers - such as an annual income of at least Cdn $ 300 00 - prevented in particular the Indians outside Ontario and Quebec from participating in federal elections It took until 1960 before all status Indians, including women, were given the franchise (INAC, 1978, p 51, Smith, 1987, p 5)

aboriginal peoples economically as well as politically (Morse, 1985, p. 7). The 1869 act, therefore is a reflection of the dominant European notions at that time With respect to the issue of sex discrimination several reasons can be stated. As Etienne & Leacock (1980. p. 1) stated: 'The Victorians saw women in non-Western societies as oppressed and servile creatures, beasts of burden, chattels who could be bought and sold, eventually to be liberated by "civilization" or "progress", thus attaining the enviable position of women in Western society'. The imposition of patri-organization was perceived of as stimulating civilization, that would 'uplift' the Indian women's socio-legal position to that of white women McCormack (1976, p. 4) argues that colonial powers made deliberate efforts to alter male and female statuses to conform them to European ideals This resulted often in decreasing power for aboriginal women. Prevailing evolutionist theories in the anthropological discipline of that time (for example those of Tylor and Morgan) affirmed the European conviction of Indian civilization.

The sex-discriminatory as well as the enfranchisement clauses not only reflected the dominant notions at that time but were also a strategy to diminish, what was perceived as, 'the Indian problem' quantitatively as well as qualitatively The prevailing racial, sexual, and class system allowed Indian women to have relationships with white men but the reverse was not possible (cf. Steinem, 1983, p. 20). Since Indian women who 'married out' lost their legal status and Indian men did not (or could not) marry non-Indian women, clause VI would bring about a decrease in the Indian population. Status Indian women who married Indian men from the U.S.A. were also considered to have 'married out' and as a consequence lost their status (17). Furthermore, the enfranchisement act was to make Indians to think, act and live like white persons. Thus, by civilizing them the Indian population would qualitatively diminish (cf. Robertson, 1970, p. 123)(18).

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17) Registration of Indians since the latter half of the 19th century was actually the counting of Indians and measuring the weight of the 'Indian problem' Historically, Indians did not only lose their legal status through the Indian Act but due to Indian Affairs practices as well Entire bands and families that were on hunting trips were left out when first registration was carried out in 1874 (Holmes, 1987, p 4)

18) Non status Indians often identify themselves as being without a legal status whatsoever Losing legal status as an Indian meant being nobody, belonging nowhere Not before 1960, did all Indians become Canadian citizens with according rights

The 1869 act showed no respect for Indian cultures and their respective variations in social and political organizations. It was ignored. Although the act did not prohibit people from being kin from the Indian mother or think in the Indian lineage way, with respect to marriage, children, and settling one had to stick with the law. The patrilineal and patrilocal system applied to all Indians. As a matter of fact, what Indian people have in common is mediated through legal codes. These legal codes interfered in almost all aspects of the Indian people's lives.

Clause VI as well as the Enfranchisement Acts were incorporated into the Indian Act in 1876 which was the first comprehensive piece of federal legislation pertaining to Indians. The Indian Act is of the utmost importance for it states that all Indian lands are hold in trust by the Crown and because it regulates virtually every aspect of reserve life, including band politics. Some of the most important issues that are regulated in the Indian Act are: Indian administration, definition of status and non-status Indians, reserve policy, possession of land on reserves, trespass on reserves, land taken for (Canadian) public purposes, landcessions, descent of property on reserves, special reserves (no treaty rights), management of Indian moneys, loans to Indians, election of chief and band councillors, powers of the band council, and enfranchisement. With respect to the status of women, the following sections of the Indian Act are important:

'2(1)
"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian.

11(1)
Subject to section 12, a person is entitled to be registered if that person

(a) on the 26th day of May 1874 was (...) considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
(b) is a member of a band;
(c) is a **male** person who is a direct descendant in the **male** line of a **male** person described in paragraph (a) or (b);
(d) is the legitimate child of
    I. a **male** person described in paragraph (a) or (b),or

II. a person described in paragraph (c);
(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d), or (e).

12(1)
The following persons are not entitled to be registered,
(a) a person who
I. has received or has been allotted halfbreed lands or money scrip,
II. is a descendant of a person described in paragraph I,
III. is enfranchised,
or
(b) **a woman who married a person who is not an Indian, unless that women is subsequently the wife or widow of a person described in section 11'** (see Appendix 1) (IA, 1970, p. 4250, pp. 4254-4256, emphasis added by LK).

Indian women depended on their fathers and husbands for recognition of their Indian identity and according rights. And, while Indian women could become white women, the latter could become status Indians. Within the history of law, however, this makes sense for at the time when the Indian Act was established, women were perceived as either property of their fathers or husbands. The latter two controlled women's production as well as reproduction (19). The Indian Act status regulations had considerable repercussions on the Indian people's lives but in particular on those of Indian women (Krosenbrink, 1984b, p. 43; cf. Manyfingers, 1986, p. 64). As Sanders (1975a, p. 14) states: 'There is hardly an Indian family in Canada that has not been affected by the inequities of the present membership system'.

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19) Structural discrimination against women has been part of Canadian policy, as was the case in many other societies Until 1947, Canadian female citizens who married foreign citizens lost their Canadian citizenship whereas men could not lose it Not before 1977 (cf Canadian Human Rights Act), would women retain Canadian citizenship Furthermore, until 1977 only foreign-born male Canadian citizens could apply for citizenship status for their foreign-born children (Jamieson, 1979, p 177, Juteau & Roberts, 1981) To give an example from the Netherlands until 1957 married women were legally declared to remain under tutelage of their husbands (cf Statute 14/6/1956 of The Netherlands, State Record #343, cited in Asser & Rutten II, 1982, p. 150)

2.3 Major Indian Act amendments, 1876-1960

After the establishment of the Indian Act and until 1951, the year in which a major amendment was introduced, the federal government was able to gain more power over all aspects of Indian people's lives (20). Paradoxically, thanks to the Indian Act, and despite its inherent assimilative policy, the Indian people were able to remain ethnically distinct.

Immediately after the establishment of the Indian Act, the federal government focused its attention on the enfranchisement policy. From 1857 till 1920, some 250 Indian persons were enfranchised. The predominant on-reserve Indian population appeared reluctant to give up their special status and identity. To many of them, losing status as an Indian person meant being left with no legal identity at all. Therefore, the federal government decided that any Indian person who remained off-reserve for more than five years, for instance to receive secondary education, would be automatically enfranchised. From 1876 until 1920 this involved another 500 Indian persons (Tobias, 1987, p. 153). Furthermore, since 1918 it was stipulated that Indian women who were living apart from their husbands were also enfranchised but this was repealed in 1924. Since the federal government remained unsatisfied with the rate of civilization of Indians, a major Indian Act amendment in 1920 gave the federal government the right to enfranchise Indian men, including their wives and minor children, single-handedly. In 1922, this was repealed by the liberal government but reintroduced in 1933. Ever since the enfranchisement policy existed the Indian people had protested against it. They feared that enfranchisement would severely hamper band community life, and consequently endanger the existence of a separate, Indian identity. They felt that their survival as a distinct people was at stake (INAC, 1978, pp. 115-125; Tobias, 1987, p. 154).

According to Corrigan (1974), there were obstacles to a uniform application of all Indian Act regulations, particularly referring to family law. Provincial laws were applicable to Indians as well (IA, 1970, section 88). Not all provinces accepted a common-law

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20) For example, the Migratory Birds Convention of 1917 curtailed the Indian people's hunting rights despite the fact that the treaties had provided for all-year-round hunting rights. Thus, the Indian people's way of subsistence was severely restricted, especially in the northern, more remote areas (INAC, 1978, p. 112).

arrangement between two Indians and therefore the offspring could be registered as either 'illegitimate' or 'legitimate', which had serious consequences for the children's legal status (cf. Sanders, 1975a)(21).

The Inuit, however, have received a more sensitive reception before court than Indian people have with respect to family affairs (22). The first two judges in the North West Territories, Judge J. Sissons and W. Morrow, both made decisions that supported the Inuit cultural traditions. Customary Inuit marriage as well as Inuit adoption rules were accepted as legal (CASNP, 1978, p. 17). Only formal adoption was approved in the case of the Indians until 1982.

After the Second World War significant changes took place. New perceptions of Indian policy reflected the notion that the assimilation policy should be abandoned. Indian people's successful integration into Canadian society was only possible if they were allowed to retain and develop their Indian identity and culture (23). In 1946, a special Joint Parliamentary Committee was appointed to revise the Indian Act. The Committee also invited Indian groups to present their views. The Committee's report was released in 1948 (INAC, 1978, pp. 120-130).

In 1951, through Bill C-79, the Indian Act was amended. First of all, discrepancies between offences in the Criminal Code and the much stricter ones in the Indian Act were removed. Furthermore, the prohibition on the performing of Indian ceremonies was removed and people were allowed to publicly speak in their own language. The requirement to obtain permission from the Indian agent to travel or to sell produce was omitted.

With respect to Indian women, the following changes in the Indian Act of 1951 are relevant. Indian women were allowed to vote

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21) The Saskatchewan District Court decided in the Derocher case in 1956 that the illegitimate son of a status Indian man and a non-status Indian woman was 'a direct descendant in the male line of a status Indian male' and should therefore receive status (cf. IA, 1970, section 11(1)c). In the case of a female descendant the court decision would have been different. The Ontario County Court decided in the Froman case in 1973 that section 11(1)c was limited to legitimate children and that therefore neither illegitimate males nor females should obtain legal status (Burrell & Sanders, 1984)

22) Since the Supreme Court decision in the 'Re Eskimos' case of 1939, the Inuit are recognized as 'Indians' (read: aboriginal persons) in the British North America Act of 1867. The Indian Act, however, does not apply to them (IA, 1970, section 4(1), cf. INAC, 1978, p. 119)

23) However, status Indians who enrolled in the army and had gone overseas during the Second World War were nevertheless 'honoured' with enfranchisement.

in band elections. I presume that this amendment was in anticipation of the United Nations Convention on the Political Rights of Women, 1952, which is ratified by Canada. Furthermore, automatic enfranchisement of Indian wives and their children was debilitated since the approval of the Indian wife was required (INAC, 1978, p. 133; Jamieson, 1978, p. 59; Roosens, 1986, p. 40). More important are the new restrictions in the revised Indian Act:

> '12(1)
> The following persons are not entitled to be registered, namely,
> (a) a person who
> IV. is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)a, or b, or d or entitled to be registered by virtue of paragraph 11(1)e, unless being a woman, that person is the wife or a widow of a person described in section 11' (IA, 1970, p. 4255).

Section 12(1)aIV is known as the 'double-mother rule'. Section 12(1)b, which remained intact until 1985, became known as symbol of sex discrimination of Indian women. Until 1974, the loss of status meant automatic enfranchisement as well (see enclosure 2.1)(Jamieson, 1978, pp. 64-65).

Two other Indian Act amendments of a later date should be mentioned. They are also important with respect to sex discrimination, although not exclusively female:

> '11(1)
> Subject to section 12, a person is entitled to be registered if that person
> (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d)
>
> 11(2)
> Paragraph (1)(e) applies only to persons born after the 13th day of August 1956.
>
> 12(2)
> The addition to a Band List of the name of an illegitimate

child described in paragraph 11(1)e may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph' (IA, 1970, p. 4255).

closure 2.1 Certificate of Enfranchisement

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

INDIAN AFFAIRS BRANCH

CERTIFICATE OF ENFRANCHISEMENT

This is to certify that

formerly of the Temiskaming Band of Indians, was enfranchised by Order in Council P.C. No. 1962-1546 dated November 1, 1962 and from that date is deemed not to be an Indian within the meaning of the Indian Act or any other statute or law.

10/12/62
DATE OF ISSUE

DIRECTOR, INDIAN AFFAIRS

Source: 'The Native Perspective' 2,7, 1977, p.43

Implications for Indian women's sociopolitical and leg positions

e Indian Act ignored all cultural differences between Indi ions and, in combination with the treaty and reserve syste ated and strengthened a single ethnic category of Indians:

'So the British government - and later the Canadian government - created an identity, a status for the Indian (...). He became a figment of the Anglo-Saxon imagination. He is at

least in his official, legal and public self, an artificial creation. The Anglo-Saxon Canadian invented the Indian' (Robertson, 1970, p. 84).

In this sense, the Indian Act is a Euro-Canadian Act which created among Indian persons an 'Indian' ethnic group consciousness. Indian ethnicity is not a matter of biology but of power relations between Indians and Canadian society at large. Those who have an officially recognized special status that was given to them by the legislator can politically act on basis of their distinctiveness. For example, the National Indian Brotherhood, a predecessor of the Assembly of First Nations, formulated political claims on basis of status Indian identity, rather than on different national Indian identities. Furthermore, since Indians can refer to a homeland - the reserves - their distinctiveness is even reinforced.

Ethnic (self)identification of Indian persons generally depends on: descent in a particular Indian band; kinship affiliation; recognition of identity by the Indian community; recognition of the band by the state authority; and Indian Act status (see Table 2.1). However, the

Table 2.1 Indian Ethnic Classification

	Female Indian non-status	Male Indian status
Band & Kinship Affiliation	Cree of band X	Cree of band X
Recognition by Indian band	non (Cree) Indian	Cree of band X
Classification by non-aboriginal persons	Indian	Indian
Indian Act Classification	non Indian	Indian

latter two criteria appear to have become the most significant ones in the process of ethnic classification and self-identification, through which cultural identity is interpreted as a legal identity (cf. Medicine, 1983, p. 65). The non-aboriginal population in Canada gradually became larger and politically dominant. Consequently, Indian persons were constrained to accept the structure of relationships between aboriginal and non-aboriginal Canadians imposed upon them, and to identify themselves primarily according to standards established by the non-aboriginal population. Lack of a positive self-identity due to colonial oppression may be a significant factor here.

The success of the federal government's policy towards Indian people can be assessed by the degree to which Indians developed internal motives to comply with the Indian Act. I am referring to a process by which the enforcing of strange structures eventually leads to the adoption of these structures as authentically Indian. The Indian Act, in the long period of its implementation, appears to have developed from a Euro-Canadian invention to an Indian reality (24). Indian cultures were moulded to uniform socio-political and legal structures according to European standards. It has fostered the belief among Indian people themselves that the Indian Act system was authentically Indian, at least as it concerned traditional patri-organization of Indian cultures. This had serious repercussions for the positions of Indian women and attitudes towards them. In this sense, the Indian Act is made Indian. As a female status informant mentioned to me: 'I don't think they (the majority of Indians, LK) ever stop thinking that the Indian Act belongs to us' (interview 25/9/85).

Non-status Indian women

The contemporary socio-political and legal positions of Indian women bear hardly any relationship with traditional positions within their respective societies. This is mainly affected by Indian Act regulations, and particularly by the sex-discriminatory status regulations. An examination of employment rates, single-parent

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24) No matter how valid this argument, there is a need for more sociological and psychological research on the processes by which aboriginal thought has distorted in terms of European assumptions (Leacock, 1981, p 263)

families, and causes of death, for instance, show Indian women, both status and non-status, to be the most disadvantaged group in Canadian society (LaPrairie, 1987; White, 1985). The Indian Act produced a strict dichotomy between status and non-status Indians, and between females and males. The power balance between status and non-status Indians is to the advantage of status Indians. Since most non-status Indians are women (including their children), they are relatively powerless.

The Indian Act status regulations created conflicting situations within Indian families, affected by horizontal as well as vertical splits. Due to the double-mother rule, parents and children (at the age of 21) were cut off from one another because children lost their status and were compelled to leave the home they grew up in. Furthermore, while some illegitimate children obtained Indian status, others were left without. Most illegitimate children remain with their mothers. In several cases this meant that children were legally dissociated from them (cf. IA, 1970, sections 11(1)e, (2) and 12(2); note 22).

Whereas status Indian males could marry whom they wanted, their sisters lost their status upon marriage with a non-status person. Furthermore, Indian women who married a man from another band became member of their husband's band. In both cases the result was that women were deprived of their birthright. They had to leave the reserve, could neither inherit property on their reserve, nor have their mortal remains buried there. The rules remained the same when these women were either widowed or divorced. Women received (small) financial compensation, but surely a birthright, or one's cultural background cannot be bought off (Jamieson, 1978, pp. 73-74; Krosenbrink, 1984a, and 1984b, pp. 43-54; Roosens, 1983, pp. 18-19).

Since non-status Indian women were forced to leave the reserve they had to integrate into larger society. Due to prevailing discriminatory attitudes this was rather difficult. This holds also for status Indian women who voluntarily left the reserve. Apart from the racial prejudices, women had to fight 19th century views of Indian women. Many female Indian informants mentioned to me that they had the feeling that they had to prove themselves in larger society to a far greater extent than Indian men had. Non-aboriginal persons, they felt, largely hold on to stereotypical, victorian, views of Indian women.

Indian women, and their children, who had lost or had never

obtained legal status were deprived of their birthright and were prohibited from participating in Indian cultures (Krosenbrink, 1984a, p. 45). Non-status Indian mothers were severely hampered in the transmission of Indian cultural values and norms to the offspring. The children could not be brought up in an Indian cultural setting. Indian norms and values were not as relevant to them in an urban, predominantly white, setting (25). Sometimes, non-status Indian children (and adults) who have not experienced life on a reserve are stigmatized by status Indians as 'not real Indians' (interview 5/11/85). Indian legal status is felt to be intermittently connected with Indian community life on the reserve. It should be noted, however, that about one third of the status Indians in Canada live off-reserve. Many non-status informants argued that it was not fair that their children were denied legal status (read: recognized Indian identity and cultural affiliation) as a punishment for their mother's love for a non-status, but perhaps even Indian, man (Adams, 1975, p. 152; Krosenbrink, 1983, pp. 22-23).

Social services provided by the federal government to status Indians have increased since the 1960s. Therefore, being a non-status person also meant not being eligible for free health care, education assistance, and certain cultural programmes. Roosens (1983, p. 50 and 1986, p. 64) argues that the loss of socio-economic resources determines at least partly the value persons put in their biological descendance and cultural affiliation. Although I consider this a valid argument, it may well be a dangerous and over-estimated assumption. We are never able to measure the socio-psychological dissociation persons suffer from upon loss of their legal status. Without doubt, many non-status Indian persons are under psychological, socio-economic, and political pressure. I will specifically refer to the latter in the next chapter.

Non-status Indian women are often in a situation without a reasonable income or proper education. This situation is even worse for those who are single parents. Particularly non-status female single parent families are in a situation of socio-economic disability and lack of self-development (cf. INAC, 1983; Pryor, 1984, pp. 13-24). To give an example, 35% of all aboriginal families residing in Winnipeg are headed by females of whom 92% are non-status Indian

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25) Active participation of non-status Indian persons in urban based Indian clubs or organizations is a means for those who would like to connect to their aboriginal roots (cf. chapter 3).

(White, 1985, p. 22).

Indian persons without legal status are not only ignored as aboriginal persons by the Canadian state authority. More importantly, they are also differently perceived by status Indian persons. For many status Indians the Indian Act has become 'the bible' of their special identity and according rights (see Table 2.1). Therefore, non-status Indians are sometimes perceived as not being real Indians. Since Indian women suffer from the Indian Act status regulations to a larger degree than men - due to their double discrimination based on their race as well as on their sex - it is obvious that they are more affected by stigmas from Indian people themselves. As a non-status Indian informant mentioned: 'It's a very unsure and scary feeling not to be identified by government or by native organizations as aboriginal people. We were taught by our parents that we are a part of the first people of this country. After marriage out of the band, we don't belong anymore' (interview 12/10/85).

Through gradual internalization of inherent European notions on women in the Indian Act, status as well as non-status Indian women were degraded. It was gradually perceived as a natural fact of life that women are second class citizens and that they have to suffer the most when it comes down to group rights. Several status Indian informants stated that women knew what would happen if they choose to marry non-status men. Too often it is assumed by aboriginal informants themselves that non-status stands for 'white'. Indian women may well be married to non-status Indian or Metis men. Furthermore, not all Indian persons are aware of the Indian Act status regulations and their implications. And last, with regard to matters of the heart, it is rather difficult to relate to issues such as 'free choice'.

Another statement, reflecting the internalization of Indian Act implications, is that status Indians should marry status Indians 'in order to keep the race pure'. However, 'Indian' is not so much a cultural or biological category but more a legal category. The loss of legal identity does not necessarily entail that individuals will identify themselves differently (cf. ONWA, 1980, p. 15). Non-status and status Indians and Metis are different legal categories but biologically as well as culturally these categories overlap and there is no clear-cut division at all. Furthermore, non-aboriginal women who have obtained Indian status through their marriage are also included in 'the Indian (status) race'. Although non-status Indian persons are sometimes stigmatized by status Indians, their Indian identity is not

totally ignored. If so, then 'non-status Indians' as an existent social category would not exist. They are recognized - although not in the legal sense - by the federal government since the beginning of the 1970s (26).

Indian Women's positions on reserves

Status Indian women on reserves have also experienced changes in their socio-political and legal positions as a result of the sex-discriminatory status regulations in the Indian Act. According to Skhylnyk (1985, p. 83) the old order of respect between the spouses has seriously eroded on reserves since mutual obligations, which reflected on the Indian people's economic way of life, became more and more irrelevant under the changing economic conditions and growing dependence on government programmes and funds.

Despite the fact that Indian women have had voting rights in band elections since 1951, band councils are still predominantly male (27). Indian band politics for males began in 1869. Since their traditional roles and tasks had become irrelevant within the reserve setting, they gladly accepted the political authority that was accorded to them within the Indian Act. The chiefs and band councillors did not operate in the traditional Indian way of politics but exercised centralized authority. This was especially after 1970 when local control on reserves was stimulated by the federal government (Adams, 1975, p. 17; Krosenbrink, 1983, p. 29 and 1984b, p. 43; NEDAB, 1985, p. 42)(28). The Indian chiefs and band councillors gradually obtained more power in deciding who was to get a job, a new house, a loan etc. Basic needs became subject to political manoeuvering. It appeared that band councils had no eye for

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26) Racial discrimination is probably a factor People on the street recognize Indian persons by their physical appearance and not by their legal identity.

27) Elsie Knott, an Ojibwa woman of Curve Lake reserve in Ontario, was the first woman Chief ever elected in Canada in 1952 (SOS, 1975, pp 100 101)

28) In particular after 1960, political leaders on reserves were mostly young, predominantly male, with a western type of education, who spoke English and who knew how to relate to the Indian Affairs Department They were responsible for the distribution of government services to the reserve population Traditional chiefs, as far as they still existed alongside the Indian Act chiefs, were put aside and no longer played a significant role (Skhylnyk, 1985, pp 101-102).

women's needs on reserves and that women depended on their fathers and husbands in order to develop economically. Status individuals must have their economic plans approved by the band council. For women to get a loan, either the father's or husband's signature was necessary. If the man had a bad reputation, the woman's economic plans would not be approved. Also, women needed to be represented by a male relative in the band administration - more than men did - in order not to find themselves at a disadvantage (NEDAB, 1985, pp. 1-5, pp. 24-25). As Two-Axe Early (1981, p. 37) argues, both status and non-status Indian women are 'raped' because they are ruled by chiefs 'steeped in chauvinistic patriarchy who are supported by the Indian Act'.

The Indian Act had serious implications for the Indian people's personal autonomy, their group's morale, as well as for their traditional socio-political and legal institutions. Most affected, however, were women. Particularly, as a result of the sex-discriminatory status regulations, they suffer from dual discrimination. As women and as aboriginal persons they are unequally treated, both within their own communities and in Canadian society at large (cf McMullen, 1981). Maria Campbell (SOS, 1975, pp. 60-61), a famous Metis author, summarizes Indian women's problems:

> 'Society is much harsher on women than it is on men. Native women have always been portrayed as unfeeling, wild and dirty by historians and later by movies and television. This, coupled with the traditions of white society which regard women as inferior, made the realities for a native woman on the street pretty hopeless. Perhaps the attitude of native men towards their women was the most painful because, along with the white man's stereotypes, there is an ancient belief that women have special powers. The missionaries who came exploited this sacred belief by impressing on us that women were a source of evil. The oppression of native people will never end until these myths are recognized and destroyed'.

The Indian Act has been, and still is, one of the most outstanding manifestations of colonial policy regulations pertaining to Canada's aboriginal peoples. It is a two-dimensional complex that structures gender relations among Indian people, and at the same time functions as a significant boundary mechanism in the development of ethnic relations between Indian people and Canadian society at large. As a

matter of fact, sex has become a significant boundary marker. The sex-discriminatory status regulations shaped, and continually reshape, individual and collective self(identification), and ethnic classification. The Indian Act proved to be an indicator for the importance of law in imposing and developing foreign socio-political structures within Indian communities. The positions of both status and non-status Indian women changed significantly as a result of the sex-discriminatory status regulations in the Indian Act. Overall, it meant a gradual degrading of their relative status vis-a-vis Indian men, and double discrimination based on their Indian ancestry as well as on their sex.

> 'Oh, we always knew what was happening to women was wrong We just got to the point where we weren't going to take it anymore' (Maliseet woman from the Tobique reserve, cited in: Silman, 1987, p 93).

In this chapter, I will describe the development of NWAC within the context of international and national political developments since the 1960s. Human rights movements, as well as ethnic and women's movements, shaped a positive climate in which aboriginal women could express their concerns To explain the existence of a separate aboriginal women's organization in Canada with a political mandate that is distinct from those of national male-dominated aboriginal organizations I will refer to significant legal cases such as those of Lavell and Bedard.

An overview of the period from NWAC's establishment in 1974 until the repatriation of the Constitution Act in 1982, evaluates the strategies aboriginal women used in order to reach their political goals during the 1970s This is a prerequisite in order to comprehend adequately the extent to which NWAC's political mandate and strategies changed after 1982 The latter period is referred to as the constitutional process on aboriginal matters

3.1 Developments in the 1960s

After the Second World War, global human rights movements and ethnic movements directed the politicians' and public's attention to the complex of problems of minority groups all over the world, largely resulting from their unequal treatment. The international political order began to dictate a movement in the direction of protecting individual and collective human rights (Little Bear et al, 1984, p. 25)(1) The Canadian federal government's actions undertaken to ameliorate the socio-political and legal positions of

1) Cf the UN Universal Declaration of Human Rights, 1948, and ILO Convention 107, 1957 (ILRC, 1984, pp 16 19, pp 52 57) The latter has been repealed by ILO Convention 169, in 1989, with new standards concerning the rights of indigenous peoples (Conference Internationale du Travail, 1989)

aboriginal peoples since the 1960s had a significant impact on their self-awareness in general, and on the establishment of national aboriginal organizations in particular, including NWAC.

Despite the fact that the amended Indian Act of 1951 allowed for social changes and greater liberty in the practising of cultural traditions, the underlying philosophy and assumptions about the relationship between aboriginal peoples and Canadian society at large had not changed (Dyck, 1985, p. 10; L. Green, 1970, p. 2; INAC, 1978, p. 193). The Indian Act and the reserve system - no matter how unjust they may have been perceived to be - ambiguously kept Indian people apart from the rest of society and consequently created and retained a sense of separate Indian identity. As an Indian informant put it: 'without the Indian Act we would have become the poorest of the poor, just another cultural minority' (interview 30/1/86). Indian and other aboriginal peoples distinguish themselves from other cultural or ethnic minorities in Canada (cf. Barsh & Henderson, 1980, p. 245; ONWA, 1982, p. 67).

Before 1960, aboriginal peoples in Canada were geographically and politically cut off from one another but this changed soon after a new policy and legislation were introduced. The Canadian Bill of Rights of 1960 stipulated that with respect to the exercizing of human rights and fundamental freedoms no discrimination was allowed by reason of race, religion, national origin, colour or sex (Kallen, 1982, p. 18). As a consequence, status Indian persons were given the franchise that same year, and the Inuit followed in 1962 (INAC, 1986b, p. 61). Non-status Indians and the Metis already had these political rights since they were perceived as ordinary Canadian citizens, but without a recognized aboriginal legal status. The 'franchise' should not be confused with 'enfranchisement' since this meant, in contrast to the latter, that status Indians would be considered Canadian citizens with all according rights but without the loss of their special status and rights.

For status Indians, the franchise was of great significance since it allowed them to leave the reserve without losing either status or band membership. As of the beginning of the 1960s the number of status Indians who migrate to urban centres was growing. They

sought better and higher education and jobs (2).

As far as the franchise related to the integration and political participation of Indian people, the new policy was no success. Integration - meaning a person's or a group of persons becoming a part of society at large - was only possible for a small proportion of the aboriginal population whose physical appearance was white enough to allow them to pass on as Euro-Canadian persons (3). Furthermore, the number of status Indians who voted in provincial and federal elections remained very small despite the new legislation. One of the reasons might be that the Indians did not trust the federal government's intention with the franchise (given their experiences with broken treaties) and that they feared that the franchise would eventually lead to enfranchisement, meaning the loss of status and treaty rights (cf. INAC 1980b, p. 95).

Status Indians who had lived in urban areas since the 1960s were better educated, sophisticated and acculturized to white dominant society. Their changing definition of 'self' revealed a growing awareness, stimulated by increased contact with larger society, by attitudes prevalent in that society, and by a reaction to deprived Indian socio-economic living circumstances (Adams, 1975, p. 177; Boldt, 1981, p. 207; Richmond, 1976, pp. 54-55; Trottier, 1981, pp. 285-286). While more status Indians began to move to urban areas and met other Indians with different cultural and regional backgrounds, they began to realize that they had a common Indian identity and common griefs as a result of the Indian Act regulations (Rogers, 1971, p. 332). A resurgence of pride and an interest in Indian cultures grew, including the idea that Indians should seek equal political participation in Canadian society as the only way to gain control over their own lives and to maintain a distinct Indian identity (Boldt, 1980, p. 23; Patterson, 1972, p. 27; Wilson, 1974, p.

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2) Krotz (1980, pp 10-14) argues that the Indian people's migration is part of a worldwide development in which cities attract more and more rural people Nowadays, most big cities in Canada, such as Toronto, Winnipeg, Regina, Saskatoon, and Edmonton have relatively large numbers of Indian and Metis people In some cases they comprise more than 30% of the city population (ibidem, p 156) Migration from periphery to centre of society inevitably caused adaptational problems for aboriginal persons For that reason Native Friendship Centres were established throughout Canada. By 1983, there were 90 Native Friendship Centres and the number keeps growing (SOS, 1983)

3) Urban Indians are not identified by others by their legal status, treaty rights, or reserve or cultural background but by their racial identity. This argument holds for the Metis and Inuit as well (cf. Anderson & Frideres, 1981, p. 21, Krotz, 1980, p 156).

24). They gradually became frustrated with the Indian administration and with obstacles to getting a foothold in the power structure of the city community. They began to set up clubs and organizations to facilitate the individuals' adaptation to their new life. Personal frustrations are often the consequence of social tensions between different groups in society. These self-help groups developed in political organizations that provided for a beginning infrastructure of aboriginal culture in cities (Asch, 1984, p. 22; Krosenbrink, 1983, pp. 53-54). Indian persons who worked for Indian organizations travelled to reserves and grew more politically sophisticated about the situation of Indian people in general. Furthermore, urbanized Indians, to a large degree, kept in touch with those who lived on-reserve. Also, urban based residency appeared not to procure a mental reorientation away from the reserve, which was still perceived as a homeland (Lithman, 1984a, p. 57). This way, urban based Indian political organizations were brought to the local community level as well.

In 1961, the National Indian Council was established to politically represent the interests of status and non-status Indians and those of the Metis. The organization was established by a small group of young urban Indian leaders with the support of the Indian-Eskimo Association of Canada (a white people's support group). National Indian organizations in Canada had existed from 1918 onwards but the National Indian Council was a new phenomenon in the sense that its leadership was different (young males, educated, and predominantly urban based) and that the federal government sought business relationships with this organization (4).

The 'White Paper on Indian Policy'

As a result of a growing human and political interest in minority groups in general and due to pressure from the National Indian Council, the federal government commissioned the Indian Affairs Branch in 1964 to conduct research on the socio-economic living

4) Cf. Adams 1975, p. 181; Bonney, 1976, and 1977; Daugherty, 1982; Krosenbrink, 1984b, p. 69; Rogers, 1971, p. 338; Weaver, 1983b, p. 39; and, Whiteside, 1973.

conditions of status Indians on reserves (5). The Hawthorn-Tremblay report, released in 1967, stated that the living situation on reserves was deplorable and that Indians had no power whatsoever to change their living conditions. It was for the first time that government agencies were criticized for their authoritarian attitudes and for using the special status of Indians to provide them with services inferior to those that were provided to other Canadians (DIAND, 1969, p. 3, p. 7; L. Green, 1970, p. 34).

When Prime Minister Trudeau came into office in 1968, he promised all Canadians a 'just society' and consequently sought to encourage non-discriminatory participation of Indian people in Canadian society. Therefore, an Indian Act revision was perceived as necessary. In 1969, the federal government released its plans in the so-called 'White Paper on Indian Policy' (cf. DIAND, 1969; Dyck, 1981, p. 280 and 1983, p. 217). The White Paper entailed the following plans:

1. Indian treaty obligations were to be fulfilled within five years and should thereupon be ended, thus ending the federal responsibility for Indians.
2. Section 91(24) of the British North America Act and the Indian Act should be repealed in order to terminate the special status of Indians.
3. The Indian Affairs branch of DIAND should be closed and Indians were to receive services from the same government agencies as other Canadian citizens.
4. Indians were to be granted individual land title in order to put an end to the reserve system.
5. Economic development plans, as part of an affirmative action policy, should uplift the socio-economic living conditions of Indians.
6. Status Indians were to become ordinary Canadian citizens but their cultural heritage was to be acknowledged within the political framework of Multiculturalism. However, ethnic or cultural differences were only tolerated as long as they remained subordinate to the dominant culture (cf. Moodley, 1983; Richmond, 1984).

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5) The Department of Indian Affairs and Northern Development (DIAND) as a separate Department was not established before 1966 Its primary task was to deliver government services to status Indians and to the Inuit

7. Already existing as well as future Indian organizations were assigned a role in implementing the White Paper policy (DIAND, 1969, pp. 6-13; INAC, 1986a, p. 87).

The White Paper claimed to be the result of consultations with Indian people. However it never mentioned anything about the sex-discriminatory status regulations in the Indian Act, let alone Indian women's degraded positions (Cheda, 1977, p. 202). Most important, the federal government had grossly underestimated the value that Indian people (including those who had no status or who had lost their status) had placed on the Indian Act during the long history of its existence. The Indian Act revealed itself to be a paradox for Indian people; it was perceived as an instrument of social control and assimilation while at the same time being a vehicle that confirmed special rights of Indians in Canada (6). The Canadian Advisory Council on the Status of Women (1976, p. 3) formulated it as follows:

> 'This repertoire of rights carries high emotional content, and although some are derived from the Indian Act, the Act is commonly used to defend the legitimacy of all such rights when they are challenged. These rights comprise the core of the "special status" argument, and the ideology of the Indian movement'.

The above statement proved to be of the utmost relevance when Indian women began challenging the sex-discriminatory status regulations in the Indian Act in the 1970s. Perceptions of the Indian Act status system provided obstacles, and as a result, women experienced conflicts with their male counterparts in their struggle for equal rights (cf. next paragraphs).

Indian protests against the White Paper policy were massive, articulate and immediate (cf. Cardinal, 1969; Chapman, 1972, p. 55). Because of the novelty of Indian mass protests there was a lot of

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6) Some 50% of the Indian population in Canada does not have treaty rights. To them in particular the statement of the Indian Act being 'the bible of Indian rights' is a viable argument.

media coverage (7). Indian organizations denounced the federal government's plans in the strongest possible way and assured themselves of a sympathetic audience (Dyck, 1983, p. 219). Ironically, the White Paper served to fan sparks of Indian nationalism, strengthened the organizational structure of existing Indian organizations, and nurtured the establishment of new ones. The success of the Indian organizations' protests can be disseminated by the speed by which the White Paper was withdrawn by the federal government. Only a few months after its release Ottawa declared that, although the Indian Act should remain intact - thus reaffirming the Indian people's separateness from larger society, alterations were sought to encourage equal participation of Indian people in society at large (Dyck, 1983, p. 221; Patterson, 1972, pp. 176-188).

In 1970, the federal government created the Indian Development Fund and mechanisms to preserve Indian cultural heritages. The establishment of Indian organizations was encouraged through the provision of core and project funding to 'native' organizations by the Department of the Secretary of State (8). It was the perception of the federal government that Indian organizations could play a role in the implementation of government programmes on the local community level, and as representative bodies they could become effective political negotiators. The federal government wanted policy initiatives from national aboriginal organizations in order to prevent future 'burning' (Weaver, 1985b, pp. 80-83). However, the tenor was to develop effective citizenship and not to stimulate self-governing powers of Indian people. At that time, the National Indian Brotherhood (NIB), as the representative body of status Indians, and the Native Council of Canada (NCC), as the representative body of non-status Indians and Metis, were only recently established.

Federal government's actions in the direction of fostering aboriginal political organizations had profound effects on the number of organizations, their relative power, expertise, sophistication, and

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7) Before 1960, the media in general denied aboriginal peoples a platform for their ideas and political concerns Media images largely reflected stereotypes However, news coverage on aboriginal peoples changed as soon as 'ethnicity' and 'equality' became validated issues in Canadian society (cf. Cooke, 1984)

8) Within the category 'native', the Inuit, non status Indians, and Metis were included as well It was for the first time that the latter two categories were recognized by the federal government as 'native' (Weaver, 1985b, p 80)

effectiveness (9). Thus, after 1970, aboriginal organizations could not be compared anymore to what they were before. Aboriginal issues after 1970 became highly politicized. Consequently the Indian Act, as a political issue, grew in importance. The Indian Act proved to be a issue of symbolic value as well; claiming future rights is easier to start from a situation of special status, no matter how fraught this status may be (Tanner, 1983, p. 28).

Impact of the women's movement

Apart from the human rights movement, the women's movement had a significant impact on the evolution of the Native Women's Association. I use the term 'women's movement' instead of 'feminist movement'. Whereas the first term is more global and refers to a unifying ideology and to general and common goals, the latter is always used in combination with a political ideology (for example, liberalism or Marxism), and reflects only a fraction of the women's movement (cf. Delmar, 1986, pp. 13-14, p. 18; Jamieson, 1979, p. 162).

During the 1960s the concern for equal and just distribution of political power, national income, and collective socio-economic provisions grew. Despite legal and political changes that supported the ideology of equality, inequality between men and women in society remained since prevailing norms and attitudes with respect to femaleness had not been affected. The second international women's movement after the mid 1960s, therefore, focused on changing norms, values and attitudes as they pertain to women's positions in society (Mitchell, 1986; Steinem, 1983, p. 15)(10). The movement not only provided new opportunities for women but enhanced women's interests, and also re-directed the area of political issues so that it became more pertinent to women's lot in society (Smith et al., 1985, pp. 221-236). The women's movement had a significant impact on the awareness of aboriginal women as well, and to a certain

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9) By 1973, there were 118 local, provincial and territorial as well as national organizations in Canada (Whiteside, 1973; Wilson, 1974, p 24).

10) The first international women's movement between 1860 and 1920 was directed to seeking legal changes, such as women's franchise. Since legislation in most states ensured sexual equality as of the 1960s, the second international women's movement focused on the contradiction between ideology and practice

degree effectuated the establishment of NWAC. It shaped a climate in which aboriginal women could voice their griefs, and make them relevant to others (cf. Fleming, 1971, p. 11; Krosenbrink, 1984b, p. 47).

The emerging of an aboriginal women's movement in Canada during the 1960s had been largely unnoticed by non-aboriginal people, as well as by aboriginal men, despite the fact that it gradually began to emerge within the Canadian women's movement at large, in aboriginal associations, and in government structures (Bonney, 1976, p. 244; Jamieson, 1979, pp. 160-161). Several aboriginal women had successful careers and others were seeking leadership positions in political associations but little publicity was focused on these women as a group. They were considered exceptions to the rule rather than as exponents of a developing movement (Goodwill, 1971, pp. 362-363). Before 1960, local aboriginal women's groups, and in particular Indian women's groups, had existed but only after that date did they begin to organize themselves on a regional base, and became preoccupied with political issues (11). These regional women's organizations organized themselves on the basis of self-identifying aboriginal identity criteria rather than on legal criteria such as 'status' and 'non-status' Indians. Women of Indian and Metis, as well as of Inuit ancestry participated in these organizations (Goodwill, 1971, pp. 364-365). The aspect of self-identification is significant since it stands in contrast to the NIB's and the NCC's membership which was determined along legal, external, categorizations.

Due to pressures from feminist groups, the Royal Commission on the Status of Women was installed in 1967 to investigate women's relative inequality with men and to provide the federal government with recommendations, thus providing a forum in which to discuss women's issues (Roosens, 1986, p. 45). In 1968, the U.N.'s Year of Human Rights, Mary Two-Axe Early, a non-status Mohawk woman from the Kahnawake reserve in Quebec, presented her case to the Commission, thereby informing the public for the first time in Canadian history on the issue of sex discrimination in the Indian Act

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11) Since 1937, Indian Homemaker clubs have existed on reserves upon instigation of the Indian Affairs branch Gradually, these local clubs were supplanted by other local women's groups whose membership was open to all aboriginal women and that were community as well as urban based Moreover, due to the impact of the women's movement, aboriginal women started to decide for themselves what the purpose of their group was (Jamieson, 1979, p 163).

and the way it affected Indian women's lives. Mary Two-Axe Early had married a white man and had consequently lost her Indian status. Nevertheless, she and her children returned to the reserve every summer and lived in the house that was willed to her by her parents which was in accordance with the Mohawk traditions. There had been no opposition to her presence on the reserve despite the fact that she and her children were not legally-recognized Indians. However, in 1967 she was informed by the band council that in accordance with the Indian Act regulations she was no longer entitled to property on the reserve (12). After Mary Two-Axe Early returned to the reserve, she started to organize a women's group, 'Equal Rights for Indian Women'. She began to receive letters from Indian women across Canada who had heard about her testimony before the Commission and who supported her actions to pursue an Indian Act amendment (13). Mary Two-Axe Early become nationally renowned for her struggle against sex discrimination of Indian women. In view of the above, I find it rather awkward that the White Paper on Indian Policy did not mention the issue of sex discrimination of Indian women at all.

The Royal Commission on the Status of Women heard several other cases of non-status Indian women and appeared impressed with the practical knowledge of these women, who seemed to know what the problems were with the Indian Act and how they should be resolved (cf. Goodwill, 1971). In 1970, the Commission released its report and among the 167 recommendations #106 pertained to Indian women. The Commission condemned sex discrimination in the Indian Act and suggested that the special status rights be restored to those who had lost them. Furthermore, Indian women should have the same civil rights as other Canadians with respect to marriage and property (Cheda, 1977, p. 202).

No matter how advantageous the White Paper on Indian Policy withdrawal, and recommendation #106 of the Royal Commission on the Status of Women's report in 1970 may have been perceived to

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12) Mary Two-Axe Early's case was rather fortunate Shortly after the band council had informed her of her eviction, in 1967, her daughter married a status Indian man and the band council decided that the couple was to have the house that was willed to Mary Two-Axe Early. Although she was not entitled to live on the reserve it was approved that she lived with her daughter and son-in-law.

13) This Indian women's group was to become a local chapter of the National Committee on Indian Rights for Indian Women (IRIW) in 1972

be, with respect to the socio-political and legal positions of Indian women things did not change for the better. First, although the federal government planned a future Indian Act revision in which aboriginal organizations were to have a political voice, the old Indian Act remained in tact. Secondly, since national aboriginal organizations, such as the National Indian Brotherhood and the Native Council of Canada, appeared to be male dominated the question was whether they would be prepared to represent Indian women's griefs concerning sex discrimination in the Indian Act. Thirdly, the development of local Indian control on reserves revealed that sex discrimination in the Indian Act was not the only problem that affected Indian women's lives. Factionalism, favouritism, and male chauvinism on reserves played their part as well. Enforced gender asymmetry through the Indian Act regulations proved to have had a significant impact on the lives of both status and non-status Indian women, both on-reserve and off-reserve (Krosenbrink, 1983, pp. 17-28; 'The Native People', 1/4/77; Silman, 1987, p. 100). It gradually became clear to Indian women that they had to seek a political niche for themselves in order to seek their rights.

3.2 The Lavell and Bedard cases

Non-status Indian women were the first to call attention to the issue of sex discrimination in the Indian Act, although shortly after to be followed by on-reserve status Indian women. Influenced by the women's movement, Indian women realized that they were treated unequally. They began to connect their deprivation with inequality provisions within the Indian Act system. It was not only that women experienced the consequences of the Indian Act more dramatically than men, but also that both status and non-status Indian women had relatively more off-reserve life experience (Pryor, 1984, p. 17; White, 1985, p. 11)(14). Several informants mentioned to me that one has to leave the reserve in order to learn about the Indian Act and its implications. The overall majority of non-status Indian women lived off-reserve. As far as status Indian women are concerned, in 1966, 16.4% of the status females as against 15.4% of the status males

14) During a survey that was undertaken by ONWA it appeared that 68% of aboriginal women who lived in urban areas were involved in aboriginal organizations whereas 42% of the on-reserve status (Indian) respondents were involved (ONWA, 1980, pp. 24-34).

were living off-reserve. In 1976 it had increased to 29.5% against 25.8% (INAC, 1983, pp. 5-7).

With more marriages breaking up since the 1960s, more non-status Indian women were separated (or widowed) and went back to the reserve where they found out that they were not entitled anymore to Indian rights. They wondered why white women who were married, widowed or separated from status Indian men had Indian rights and were entitled to live on the reserve while they had no aboriginal roots (see table 3.1)(Silman, 1987, p. 59, pp. 96-97).

Table 3.1 Indian mixed marriages *) in percentage

Mixed marriages	1966	1972	1973	1974	1975	1976
Status male and non-status female	34 3	50 0	51 1	48 3	55 0	57 5
Status female and non-status male	65 7	50 0	48 9	51 7	45 0	42 5
Total in %	100 0	100 0	100 0	100 0	100 0	100 0

*) Mixed marriage = marriage between non-status and status Indian persons, based on Indian Act regulations Due to racial connotations it is presumed that a non-status person is a non-aboriginal person However, the opposite may well be the case Within this table, 'Indian' should not be conceived as a social category but as a legal category Intermarriage = marriage between two indian persons from different bands or nations There are no records on intermarriage Between 1966 and 1976, mixed marriages remained continually around 50% of all Indian marriages

Source INAC, 1983, pp 5-12, Jamieson, 1978, p 66, Krosenbrink, 1984b, p 53, Weaver, 1978, p 7, p 23a

Two legal cases from the early 1970s, involving the sex-discriminatory status regulations in the Indian Act, clearly illustrate the complexity of the aboriginal women's sexual equality matter. The Lavell and the Bedard cases also had a profound effect on the establishment of the Native Women's Association and the way it manifested itself vis-a-vis national male dominated aboriginal

organizations.

Jeanette Corbiere Lavell, a status Ojibwa from the Wikwomikong reserve in Ontario, who was to marry a white man in December 1970, had already declared before the date of her marriage that she intended to contest sections 12(1)b and 14 of the Indian Act in court. Her reason for doing so may be illuminated by the following statement from Mary Two-Axe Early:

> 'It seems inconceivable that our biological constitution (as women, LK) should be reason enough for our birthright and heritage to be arbitrarily divested at the moment' ('The Quil', 22/10/82).

In a court case involving a liquor infraction in the North West Territories in 1967, a precedent had been set. An Indian man, named Drybones, was convicted under section 94(b) of the Indian Act for being intoxicated off-reserve (see Appendix 1). Drybones successfully challenged his conviction before the Supreme Court in 1969 on the basis that this particular section of the Indian Act contravened section 1(b) of the Canadian Bill of Rights that prohibited racial discrimination. The Drybones case proved that it was possible for the Indian Act to be overruled by that bill (Cardinal, 1979, p. 44; Jamieson, 1978, p. 79). The Drybones case and the report of the Royal Commission on the Status of Women, together with the White Paper withdrawal, resulted in renewed pride in the Indian identity. This probably motivated Lavell to litigate.

In June 1971, Judge Grossberg of the Ontario County Court dismissed her case on grounds that Lavell, despite the loss of her Indian status, had equal rights with all other married Canadian women. As such, it was found that she was not deprived of any human rights or freedoms contemplated in the Bill of Rights. Judge Grossberg did not find her inequality within her own class of people contrary to that bill and thus overlooked the fact that the Indian Act reinforced an inferior position of Indian women vis-a-vis other Canadian women (Chapman, 1972, p. 20; INAC, 1983, p. 31; Jamieson, 1978, pp. 81-82; Krosenbrink, 1984b, p. 48).

In October 1971, Lavell made an appeal to the Federal Court of Appeals and won. The three judges concluded that the Indian Act resulted in different rights for Indian women from those of male Indians when they married non-status males or Indians from different bands. The court decided that section 11(1)f, 12(1)b and 14 of the

Indian Act contravened the Bill of Rights and should therefore be repealed in due course. Right after the decision from the Federal Court of Appeals, the federal government declared that it would bring the Lavell case before the Supreme Court of Canada.

Yvonne Bedard, a non-status Iroquois woman from the Brantford reserve in Ontario separated from her white husband in 1970 and returned to her reserve to live in the house that was willed to her by her parents. A year later, Bedard was evicted from the reserve by the band council although DIAND had informed the latter that on the basis of local control several other bands had decided not to implement that particular section of the Indian Act. Bedard successfully presented her case before the Supreme Court of Ontario on the same grounds that Lavell had done (Cheda, 1977, pp. 203-204; Jamieson, 1978, p. 82; Weaver, 1978, p. 17). Together with the Lavell case, the Bedard case was brought before the Supreme Court of Canada in 1973, to which I will refer later in this section.

Both Lavell and Bedard received support from various feminist groups, which recognized their cases as an opportunity to advance women's rights in general. Duclos (1990, p. 355) argues that it was predominantly white women who were spokespersons for the women's movement in Canada during the 1970s. They created: 'an image which constructs gender as the sole basis of women's oppression, cloaked in the privileges and power attached to being white' (ibidem). Hence, feminist groups at that time focused on sex discrimination in the Indian Act as an example of inequality, and did not recognize Indian women's dual discrimination. However, feminist groups were able to attract media attention. This way, Indian people across Canada were made aware of the significance of the Lavell and Bedard cases for the Indian movement.

The Lavell and Bedard cases instigated a lot of commotion among Indian and non-aboriginal people. Lobbying by both groups was complicated by a lack of consensus. Whereas non-aboriginal groups focused on the matter of sexual equality per se, aboriginal groups began raising the question whether the federal government should continue determining Indian legal status and band membership. The awkward situation occurred that Indian sexual equality rights were largely discussed within the field of women's rights, a field which, as such, has nothing to do with the Indian Act (cf. Roosens, 1986, p. 45).

Over the years, the Indian Act appeared to have created frictions between status and non-status Indians which became visible in the

political arena. In 1968 the National Indian Council was abolished. Status and non-status Indians, as well as the Metis had political priorities that were incompatible. Therefore the National Indian Brotherhood was established to represent status Indians politically, and the Native Council of Canada was to represent non-status Indians and the Metis politically (Weaver, 1983b, pp. 40-42; Whiteside, 1973).

'Status' was sometimes linked to biology and culture, meaning that women who had lost their status were not considered real Indians anymore (Krosenbrink 1983, p.19). Furthermore, being legally recognized as an aboriginal person provided many Indians with a source of pride. And lastly, legal status had gradually become a gauge of pure Indian descendance. Within this framework the motto 'keep the Indian race pure' should be comprehended. Stigmatization by status persons created problems in particular for non-status women. Although the perception of the Indian Act as the fundament of Indian identity and existence is built on a false argument, it is nevertheless valid. Indian people in general appear not to be able to get rid of the Indian Act (interview 5/12/85). Both the National Indian Brotherhood and the Native Council of Canada determined their membership in accordance with the status regulations of the Indian Act. It should not be forgotten that the Indian Act has profoundly moulded Indian assumptions through many generations. Other Indians, however, argued that legal status provided a person with official recognition by outsiders and, for that reason, it did not make a status Indian more Indian than a non-status Indian. The same objection was made with respect to Indians living off-reserve who are for the most part non-status Indians. They argued that not living within an Indian community did not make a person less Indian. Several informants referred to persons who do not live in the country of their origin. Their distinct nationality is still respected abroad. A significant reason for the divisiveness among Indians regarding the legal status issue in the Indian Act, was that most Indians did not know what the Indian Act entailed and could or could not enforce (Silman, 1987, p. 99). Especially for status Indians it was hard to comprehend the problems that non-status Indians were confronted

with (15). A really fundamental change of the Indian Act seemed inconceivable to many status Indians (cf. Wilson, 1974, p. 5). A repeal of the Indian Act, according to them, would result in the loss of all Indian rights. Hence, those Indian persons who opposed Lavell and Bedard's actions in order to seek an Indian Act amendment were not automatically in favour of sexual inequality but feared the loss of all Indian rights.

In February 1973 the Lavell and Bedard cases appeared before the Supreme Court of Canada. The Attorney General of Canada had made the appeal in response to suggestions from government officials who were afraid of the far reaching implications if previous decisions in the Lavell and Bedard cases should be upheld. Most important, the appeal was also made in response to pressure from the National Indian Brotherhood (16). As far as the federal government was concerned, it did not want a revision of the Indian Act in view of the previous Indian protests and because the abolition of sex-discrimination in the Indian Act would bring about enormous financial consequences. The number of status Indians would increase dramatically if non-status Indian persons were to regain status and corresponding government services.

According to the National Indian Brotherhood, sex-discrimination of women in the Indian Act was wrong, but the organization was afraid that if previous court decisions were upheld, the federal government would be given the ultimate power to change or even to repeal the Indian Act without the consent of Indian people. The White Paper on Indian Policy of 1969 was still fresh in the memories of those involved. The NIB considered section 12(1)b of the Indian Act as a strong lever to force the federal government to negotiate an Indian Act revision with the NIB. It wanted to side-track the issue of sexual equality for Indian men and women in the interests of preserving Indian rights either through the Indian Act or through other legal guarantees. Therefore, the NIB wanted Indian

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15) During a survey conducted by the QNWA in 1977, it was found that 89% of the 435 male and female Indian respondents had only limited knowledge of the Indian Act, whereas in Ontario, three years later, 83% of the 1,101 respondents were reported as not being knowledgeable on the Indian Act implications (CASNP, 1978, pp 22-23, ONWA, 1980, pp. 7-13).

16) In particular the Indian Association of Alberta was against Lavell and Bedard and lobbied within the NIB to gain a majority vote in favour of a Supreme Court case to prevent an Indian Act revision by the federal government (CACSW, 1976, p 9, Cardinal, 1979, pp 44-45).

women to wait for a redress of their rights and to sacrifice their Indian rights in the interests of preserving Indian rights for (status) Indians as a group. Women, therefore, had to subordinate their goal - Indian rights for Indian women - to that of Indian men and were used as a political vehicle to pursue an Indian Act revision the way status Indian males saw fit (Cheda, 1977, p. 205; Jamieson, 1978, pp. 83-84 and 1979, p 169; Weaver, 1973, p. 14).

While the NIB leading figures were against Lavell and Bedard for political and strategic reasons primarily, it appeared that the majority of its constituency - still not fully aware of the power and limitations of the Indian Act - was against these women's actions to regain their Indian rights for other and more far reaching reasons. The constrained identity boundary mechanisms embedded in the status regulations of the Indian Act were largely internalized by Indian people and were therefore conceived of as Indian customary law. This led an Indian informant to argue that Indian people have a 'colonial mind' (interview 30/1/86). A good example of this is provided by the Association of Iroquois and Allied Tribes, of which Bedard's band was a member. The organization stated in a position paper of 1971 that the patrilineal and patrilocal status principles were in agreement with the traditional social organization of the Iroquois (Chapman, 1972, p. 57)(17). Anthropologists are aware that this claim is false. Furthermore, NIB's constituency to a large part feared the influx of white men on reserves if previous decisions in the Lavell and Bedard cases were upheld. This argument reflected an internalization of white male chauvinism since it indicated the Indian people's fear that white men would take over political power. The presence of white women on reserves (married, widowed or separated from status Indian men) was not felt threatening despite this increasing trend (see Table 3.1). This argument also reveals a discrepancy between Indian ideology and practice Although Indian males and females unanimously acknowledged the Indian women's crucial and continuing roles as mothers in retaining and enhancing cultural patterns - which I define as the traditional Indian motherhood concept - white women were not perceived as a threat to the cultural survival of Indians (Krosenbrink, 1989b, pp. 3-5). Many non-status Indian informants argued that sex discrimination in the Indian Act is not a women's issue per se. Since Indian women are

17) In 1872, however the Grand Council of Ontario and Quebec Indians had protested against the sex discrimination of Indian women that was introduced in 1869 (Jamieson, 1978, p 30)

removed from the centre of life through the Indian Act regulations, the survival of Indian communities was actually at stake. They claimed that Indian motherhood is vital to the continuation of Indian nationhood (cf. interview 23/9/85; Holmes, 1987, p. 10; Krosenbrink, 1984b, p. 46; Meadows, 1981; Shkilnyk, 1985, p. 83). Since the NIB went so far as to determine Indian band membership in terms of legal access to reserves, rather than in terms of cultural resourcefulness, this was perceived as detrimental to Indian cultural continuity (cf. Weaver, 1978, pp. 25-26).

The Supreme Court decided in a 5 to 4 vote against Lavell and Bedard. The Canadian Bill of Rights was not considered effective to overrule the Indian Act, and the fact that Indian women were treated differently upon marriage with a non-status man or an Indian from another band was not considered relevant to the cases brought before the Supreme Court (Eberts, 1985, p. 61; Jamieson, 1978, pp. 85-86; Kerr, 1975, p. 23). Both the federal government and the NIB saw the decision as a victory. The NIB saw it as a victory for Indian rights. That Indian women were denied Indian rights was ignored, since it was not relevant to their political mandate.

The Lavell and Bedard cases had awakened both the Canadian public and Indian people. It proved to be an issue of a moral dilemma over which the women's movement and the Indian movement collided; the Indian ideology of special status was perceived as irreconcilable with the equality ideology of the women's movement. However, to Indian women the issue had never been as described as above. They had never asked for equal rights with other Canadians but for equal rights with other Indians: 'We can't begin discussing universal women's rights because at this time we can't even get Indian rights for Indian women' (IRIW, n.d., p. 15). Misinterpretations of Indian women's political goals on the part of both the Indian movement and the women's movement were due to a lack of understanding of the true character of the Indian or aboriginal women's movement, as NWAC argued in the 1980s.

3.3 The Native Women's Association of Canada and the National Committee on Indian Rights for Indian Women

The concept of a distinct national body to represent aboriginal women's views was given birth to in 1971, a few months before the Lavell case was before the Federal Court of Appeals. At that time

the National Indian Brotherhood, the Native Council of Canada, and the Inuit Tapirisat of Canada (ITC) were already established. Through the efforts of the Voice of Alberta Native Women's Society - a provincial non-status and status Indian and Metis women's organization - and with the financial support of the federal government through the Department of the Secretary of State, the first national aboriginal women's conference was held in Edmonton in 1971. At the conference the desire was expressed by the delegates from local and regional aboriginal women's groups across Canada to have a separate national aboriginal women's organization in order to have women's issues adequately addressed and to change the images of aboriginal women held by society at large as well as by their own men. Prevailing gender inequality between aboriginal men and women had resulted in differing perspectives and political aspirations. Male dominated national aboriginal organizations appeared not to be concerned with aboriginal women's views.

At the Edmonton conference in 1971 a Steering Committee was established with the mandate to draft the basic objectives of the forthcoming Native Women's Association of Canada (NWAC). It was also resolved to create a commission to discuss the discriminatory status issue in the Indian Act (CASNP, 1978, p. 19; Goodwill, 1971, pp. 365-368; NWAC, 1985b, p. 1). The Steering Committee organized a second national aboriginal women's conference in Saskatoon in 1972 in order to share social, cultural, and political information and to check whether there was enough grass roots support for the proposed establishment of a Native Women's Association of Canada. Furthermore, a panel of Indian women was featured, including Jeannette Corbiere Lavell, to discuss problems of Indian women resulting from the Indian Act (18). During the panel discussions it became clear that Indian women themselves were divided on the 12(1)b issue which stands as the symbol of sex discrimination against Indian women in Canada. Especially the Voice of Alberta Native Women's Society, which was the only effective provincial aboriginal women's organization at that time, strongly opposed Lavell despite the fact that its membership consisted of non-status Indian women as well. The organization was of the opinion that Indian nations that inhabited Alberta had patrilocal and patrilineal systems of social organization by tradition

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18) Lavell was one of the founding members of the Ontario Native Women's Association (ONWA) in 1972.

and that the Indian Act status regulations were therefore in agreement with traditional Indian cultures in that province. Several Indian informants from that area, however, argued that Indian women who opposed Lavell's actions did not fully comprehend the issue at stake and were influenced by their husbands. Most Indians in Alberta are treaty Indians. Among them the conception prevails that changes in the Indian Act may affect treaty rights. However, Indian Act rights and treaty rights are distinct rights. Furthermore, they argued that despite the original patrilineal and patrilocal social organization of the Alberta Indian nations, women were respected and had a political voice which was not the case with the Indian Act. Thus, according to these women, the Indian Act was not in accordance with any Indian traditional system of social organization (19).

During the second national aboriginal women's conference in Saskatoon in 1972 it appeared that it was not possible to have a single national aboriginal women's organization while at the same time having on its political agenda the status regulations of the Indian Act as they pertained to Indian women. Indian women themselves were divided between those who based their self-identity on the Indian Act and those who based it on other criteria. Therefore, it was decided to create two national aboriginal women's organizations with distinct political mandates.

The Native Women's Association of Canada held its first national assembly in 1974, but its constitution dates back to July 1973. NWAC represented aboriginal women who based their identity on self-identifying criteria, being non-status and status Indian women, Metis and Inuit women. NWAC's political mandate consisted of the promoting of interests of aboriginal women and to assume active roles within their communities. Important issues of concern were women's employment opportunities, economic development of aboriginal communities, alcohol and drugs abuse, child welfare, environmental issues, and aboriginal cultures' arts and crafts (20). Although its aim was to study problems that confronted aboriginal women, no explicit mention was made in the direction of the Indian Act. (NWAC, 1985b, pp. 1-5). Its organizational structure is divided

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19) Sanders (1975b, p. 657) seriously doubts whether the Indian Act really codified any particular Indian system of social and political organization He argues that the Indian Act should be perceived as a reflection of the western Victorian type of social organization

20) According to Roosens (1986, p 115) aboriginal women's arts and crafts groups should be taken seriously since activities that are performed guarantee continuity with cultural histories.

into three levels. Firstly, the local chapters are affiliated to a provincial or territorial member association but their goals are flexible according to the needs and interests of those involved. There are some 400 local chapters of the Native Women's Association spread all over Canada, with no less than 100,000 active members. The local chapters are informally organized and are urban as well as reserve based. These informal groups are of great importance. They foster networking communications, provide aboriginal women with an opportunity to develop organizational skills, and establish a reputation (cf. Keefe, 1976, p. 216, p. 220). Secondly, the provincial and territorial member associations (PTMA's) each have their own Constitution and political mandate and direct the national political agenda; and thirdly, the national office in Ottawa is the base from which the leaders of NWAC operate politically. However, this office came into being only after 1980 (see Table 3.2).

Table 3.2 The Native Women's Association of Canada (1974)

Provincial and territorial member associations (PTMA's) *)	Year of establishment
British Columbia Native Women's Society	1969
Alberta Native Women's Association	1967
Saskatchewan Native Women's Association (Aboriginal Women's Council of Saskatchewan)	1971
Ontario Native Women's Association	1972
Quebec Native Women's Association	1973
Nova Scotia Native Women's Association	1973
Yukon Indian Women's Association	1974
Native Women's Association of N.W.T	1974
Sheshatshui Native Women's Group of Labrador	1980
New Brunswick Native Indian Women's Council	1973
Aboriginal Women's Association of P.E.I.	1974
The Aboriginal Women of Manitoba (The Indigenous Women's Collective of Manitoba)	1970

*) Newfoundland has no provincial aboriginal women's organization.

Source: NWAC, 1985b, pp.4-5 and 1988.

With respect to determining the political mandate, the Board of Directors is crucially important. The Board comprises two delegates from each provincial and territorial member association, and convenes at least twice a year. The Executive exercises the powers of the Board and is responsible for coordination, planning, administration, and public relations. The Association's Executive consists of a national president, two vice-presidents, a secretary, and a treasurer. They are elected at the annual meeting of the general assembly and hold office for two years. They are eligible for re-election (NWAC, 1985b, pp. 4-5). Hence 29 persons, are the heart of the aboriginal women's network in Canada.

The National Committee on Indian Rights for Indian Women (IRIW) was established in 1972 and started off as an Alberta non-status Indian women's group in 1971. It represented both status and non-status Indian women who were committed to combatting the sex-discriminatory status regulations in the Indian Act (21). The organization had provincial and territorial member associations in Quebec, the North West and Yukon Territories, British Columbia, and in Alberta. As a matter of fact, Lavell and Bedard were defended before the Supreme Court in 1973 by the Native Council of Canada on behalf of the National Committee on IRIW which was unable to do so for it was not formally incorporated until 1974 (CASNP, 1978, p. 7). Furthermore, several feminist groups throughout Canada intervened on behalf of both women (Kerr, 1975, pp. 24-25; Sanders, 1975b, pp. 666-667; Weaver, 1978, p. 19).

Despite the fact that the aboriginal women's movement in Canada manifested itself initially in two separate organizations, informants from both NWAC and the National Committee on IRIW were unanimous in their statements that without the sex discriminatory status regulations in the Indian Act no separate aboriginal women's organizations in Canada would have ever existed. Despite their divisiveness on the status issue as such, they claimed that the patriarchal bias of the Indian Act had created vested interests for male Indians and that, irrespective of the legal status of Indian women, they all felt the consequences thereof (cf. Kerr, 1975, p. 2).

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21) In 1972, SOS created the Aboriginal Women's Programme in order to provide funding for both NWAC and the National Committee on IRIW. In contrast to the male-dominated national aboriginal organizations, the aboriginal women's organizations' Executive did not receive salaries as part of the core funding programme. Since 1978, both organizations have received core funding (SOS, 1983, pp. 1-4; cf. Cantryn, n.d.).

Furthermore, it was agreed by female informants that the Lavell and Bedard cases started aboriginal women across Canada moving politically. Again, the impact of the women's movement should not be ignored since it stimulated the federal government to pay more attention to women's issues in general.

Although NWAC and the National Committee on IRIW were considered distinct organizations, the division was not clear-cut at all. I argue that the separateness of these organizations, although initially necessary, became more and more a political strategy. This way, the Native Women's Association was able to hold the grass roots together (controversial issues were left to the National Committee on IRIW) and tried not to put the National Indian Brotherhood's back up. Mary Two-Axe Early, who was a prominent member of the Steering Committee of NWAC, was also one of the founding members of the National Committee on IRIW. Women who held executive positions in NWAC appeared to be members of provincial and territorial member associations of both NWAC and the National Committee on IRIW. When the Quebec Native Women's Association was established in 1973, members of IRIW in that province were voted on to the Board of Directors of the organization (cf. CASNP, 1978, pp. 22-23). It appeared that women who were actively involved in one or both aboriginal women's organizations were also involved in other aboriginal organizations, whether political or non-political, and often had careers that facilitated working with or for aboriginal people (for example: teachers, nurses, and DIAND employees). To women who were professionally or politically involved in aboriginal peoples' concerns, their aboriginal identity became a professional identity as well (cf. SOS, 1975).

There are several striking differences between national aboriginal women's organizations and male-dominated aboriginal organizations. First, NWAC and the National Committee on IRIW base their membership on self-identifying criteria. Any person of aboriginal ancestry is included in the (passive) membership. The NCC and the NIB, however, base their membership on legal criteria. Furthermore, women's organizations deal specifically with aboriginal women's issues, and predominantly with Indian women's griefs and goals. NCC and the NIB politically represent all aboriginal persons (except the Inuit) but their political mandates are nevertheless male-dominated. This is reflected in their leadership and their decision-making processes as well. And lastly, the Executives of women's organizations do not receive salaries. They do their job on a

voluntary basis. Male-dominated organizations' Executives receive salaries. Political leadership is tied to employment and career making.

3.4 Negotiating Indian women's rights during the 1970s

Notwithstanding the fact that NWAC's political mandate did not provide for preoccupation with the issue of sex discrimination in the Indian Act, right after its formal establishment in October 1974 this became a most urgent and crucial issue for the organization. The upheavals regarding the Lavell and Bedard cases in 1973 had made clear the necessity to non-status and status Indian women alike to seek a separate political negotiating position in order to adequately deal with legal, political and practical problems that Indian women were confronted with. Thus, NWAC adopted the National Committee on IRIW's motto: Indian rights for Indian women. It appeared that both the National Indian Brotherhood and the Native Council of Canada operated in a western, male-dominated political structure and that despite their different attitudes toward the issue of sex discrimination against Indian women, women had serious trouble in seeking leadership positions in either one of these organizations (L. Green, 1983, p. 12; Kerr, 1975, p. 49; Silman, 1987, p. 102). The higher the organizational level of the NIB and NCC, the less women were found in the political office (cf. Bonney, 1976, p. 246). Even when Indian women presented their political views separate from male-dominated aboriginal organizations, they had to take into consideration male views (22).

NWAC's agenda included all issues of interest to its female constituency but its general theme was that Indian leadership which accepted the Indian Act status notions was actively denying the rights and cultural heritages of Indian people. However, since it knew that the Indian Act had become a significant frame of

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22) In 1975, Mary Two-Axe Early and several other non-status Indian women were delegates to the U N Women's Conference in Mexico City They addressed the issue of sex discrimination against Indian women in Canada, both legally and in practice (particularly, on the band level) The Indian band administrators appeared not to appreciate the Indian women's critical views and non-status Indian women who were still residing on the reserve were informed that they would be evicted in accordance with the Indian Act regulations Mary Two-Axe Early was allowed to remain on the reserve on the condition that she refrained from political activities in the future, which she has never done

reference for many Indian people, it tried to pursue a section 12(1)b amendment rather than promoting a repeal of the whole act (Aggamaway, 1983, p. 73; CASNP, 1978, p. 3). In order to reach its goals it lobbied both the NIB and the NCC, as well as the federal government.

In 1975, the Joint Cabinet-NIB Committee started working on an Indian Act revision. This was in compliance with the federal government's promise, after the White Paper's withdrawal in 1970, and reconfirmed after the Supreme Court decision regarding the Lavell and Bedard cases in 1973, that nothing in the Indian Act would be changed without the consent of the people involved. The NIB prevented both NWAC and the National Committee on IRIW from participating in the Joint Committee and was not prepared to discuss the issue of sex discrimination in the Indian Act. Instead, the NIB was of the opinion that individual Indian bands should decide on this matter and it continued to seek self-determining powers for Indian bands within the legal framework of the Indian Act (cf. Cardinal, 1977, p. 122; NIB, 1977).

As far as the federal government's attitude was concerned, the Lavell and Bedard cases proved that litigation is a useful element in an overall strategy for change (Eberts, 1985, pp. 62-63). Ottawa was prepared to work towards a repeal of all sex-discriminatory provisions in the Indian Act. However, it took the position that legal status provisions could only be altered after an agreement was reached on a total revision of the Indian Act. The Indian Act was declared exempt from the Human Rights Act of 1977 in order to prevent Indian women from litigation (Holmes, 1987, p. 5)(23).

In 1978, the Joint Cabinet-NIB Committee was dissolved since it was clear that it had not accomplished anything. However, in 1976 the federal government had established a Sub-committee of the House of Commons Standing Committee on Indian Affairs and Northern Development in order to prepare an amending formula regarding the sex-discriminatory provisions in the Indian Act. Both NWAC and the National Committee on IRIW were invited to make presentations to the Sub-committee (HoC, 1976, p. 15).

The president of the Native Women's Association declared that priority number one for Indian women had become the changing of

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23) Since 1975, equality between men an women has been brought into various Canadian Acts and consolidated in the Human Rights Act of 1977 (cf. CACSW, 1976, pp 1-2).

the Indian Act in order for women to acquire their rightful place in Indian society (ibidem, pp. 4-7). Lavell (ibidem, p. 15), a second representative of NWAC, commented on her speech to the Sub-committee on Indian Women and the Indian Act in the following manner: '(Indian, LK) Women had much respect and had decision-making powers within their own community. Perhaps it was not as evident to the anthropologist, but within our system it was there'. And furthermore, a representative of the National Committee on Indian Rights for Indian Women (IRIW, 1979, p. 14) stated:

> 'The fundamental role of the Indian mother as a basic link in the cultural and linguistic continuity must not be underestimated if the preservation and growth of the Indian way of life in Canada is indeed a priority'.

Both statements clearly show how the traditional Indian motherhood concept serves to justify the Indian women's claim to equal rights for Indian men and women (cf. Krosenbrink, 1983, pp. 48-49). Both NWAC and the National Committee on IRIW were of the opinion that in future women should not lose their Indian rights upon marriage with a non Indian and that those who had lost these rights, including their offspring, should have them restored (IRIW, 1978; 'The Native Perspective', 2,7, 1977). When, in 1978, the Joint Cabinet-NIB Committee was dissolved, the work of the Sub-committee on Indian Women and the Indian Act became one of the most important political avenues for aboriginal organizations to discuss Indian rights.

There are several reasons why the federal government was prepared to change the sex-discriminatory provisions in the Indian Act since the mid 1970s. I have already discussed the effects of the Lavell and Bedard cases and the pressure from feminist groups. Furthermore, Canada had ratified the International Covenant on Civil and Political Rights, as well as the Helsinki Human Rights Act in 1976. The federal government feared that the Indian Act's declared supersession over laws governing the majority in Canada might be overruled (cf. Two-Axe Early et al., 1981, p. 37). Also, Canada's internationally-respected reputation was endangered by political action from another Indian woman.

Because there were no legal resources left for Indian women to combat the Indian Act, the U.N. Human Rights Committee in Geneva (Switzerland) had accepted the complaint from Sandra

Lovelace. She is a Maliseet woman from the Tobique reserve in New Brunswick who had lost her status upon marriage with a white man. When she separated from her husband she returned with her child to the reserve. There, she was informed by the band council that she was not entitled to Indian rights anymore and could therefore not reside on the reserve. Lovelace was stimulated by status women from the Tobique reserve to take her complaint to the United Nations, since they found her case to be a useful strategy in pressuring the Canadian government to deal with Indian women's issues (Silman, 1987, pp. 13-14, p. 176)(24). Due to the international embarrassment inflicted upon the federal government by Sandra Lovelace, it promised the U.N. Human Rights Committee to offer the necessary information on this case and to seek an Indian Act amendment in due course. In the next paragraph, I will return to the Lovelace case.

During the 1970s, NWAC and the National Committee on IRIW manifested themselves as separate aboriginal women's organizations. Active involvement from their constituencies grew, including their number of provincial and territorial member associations. Their existence proved that something was wrong at the level of band politics, as well as with national aboriginal organizations which claimed to represent the interests of both aboriginal men and women. Aboriginal women's organizations gave women the opportunity to develop political leadership roles from which they were otherwise hindered. As Gottfriedson (cited in: SOS, 1975, p. 19) argues: 'Some men do reject the idea of women taking leadership roles but we feel that's our responsibility (...). We tell our men we want to be involved in all these negotiations (with the federal government, LK) that are taking place since we are the ones who are affected by any policy changes in the future'.

In particular NWAC proved to be an adequate support base to develop aboriginal women's self-confidence, and reflected a trend towards growing politicization of aboriginal women's issues. As a matter of fact, during the 1970s it became more and more obvious that Indian identity was a bargainable issue. What Indianness constituted was politically negotiated and legally determined through

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24) The unfair treatment of the band council, which prejudiced women in the distribution of available houses on the reserve, started women of Tobique moving in 1977. For several months they occupied the band office and requested houses for status and non-status Indian women and their children (Silman, 1987, p. 11, p. 93)

Indian Act regulations. It appeared that NWAC and particularly the NIB differed significantly in their interpretations of Indian identity.

NWAC's relationship with the male dominated NIB was tense during the 1970s. The NIB accused NWAC of being made up of a group of feminists who were merely interested in women's rights instead of Indian rights. This became obvious during the Native Women's Walk in Ottawa in July 1979. What was initially a local Tobique Indian women's protest against the bad housing situation on the reserve grew into a national Indian women's campaign. Indian women demanded abolishment of section 12(1)b of the Indian Act - including reinstatement of non-status Indian women and their children - and more funding for NWAC in order to establish a national political office in Ottawa (cf. press statement Ennis, 1979; Kaye, 1981, p. 8; Silman, 1987, pp. 159-179). The NIB did not support the Native Women's Walk because it did not want any changes in the Indian Act until the existence of Indian and aboriginal rights was fully recognized by the federal government and legal guarantees were given that they would remain, even when the entire Indian Act was repealed (Silman, 1987, p. 159). Noel Starblanket, president of the NIB at that time, was prepared to make a move in the direction of aboriginal women's political aspirations, but he was soon replaced by another leader ('Kanai News', 1/9/79; Starblanket, 1979, pp. 1-4).

The National Committee on Indian Rights for Indian Women was even more criticized by the NIB for its lobbying activities in order to seek changes in the Indian Act. The Native Council of Canada had a working relationship with NWAC, and even more so with the National Committee on IRIW. The latter two organizations wanted non-status Indian persons to have legal status according to the Indian Act. The NIB represented only the interests of status Indians and appeared not to recognize non-status persons' griefs and goals, and in particular those of women. NWAC's position was unique because it wanted to get rid of the Indian Act status regulations since they based aboriginal identity on non-legal criteria. However, since it appeared unlikely even in the minds of the Indian people themselves that the Indian Act system would ever disappear, the organization pleaded for sexual equality within the Indian Act system.

The Native Women's Walk and the Lovelace case of 1977 urged the federal government to remove the sex-discriminatory provisions in the Indian Act. Ottawa began to operate a political strategy of blaming the NIB for not having been able to move towards an Indian Act amendment earlier. However, in December 1979 the

federal government fell. It seemed that aboriginal women had to start lobbying for Indian women's rights all over again.

What about Metis and Inuit women's rights?

Although the Native Women's Association of Canada started off as a national aboriginal women's organization, the Indian women's rights issue during the 1970s proved that the organization was primarily a status and non-status Indian women's organization. Since 1975 Inuit women had been working towards the establishment of a separate Inuit women's organization which was to become the seventh associate member of the Federation of the Inuit Tapirisat of Canada a few weeks after the first First Ministers' Conference on Aboriginal Constitutional Matters, in March 1983. Inuit women's problems differed greatly from those of Metis and Indian women and NWAC could barely do justice to their griefs and goals. The Inuit Women's Association and NWAC until today have had a close working relationship and they support one another politically (INAC, 1974, p. 57; IWA, 1985, p. 1; Krosenbrink, 1987). Inuit women have never been excluded from membership in Inuit councils, or from executive positions in Inuit organizations (cf. Freeman, 1984, pp. 57-58; IWA, 1984; McElroy, 1976). Issues that Inuit women are particularly concerned about are recognized community issues, such as jobs, education, and child care. Hence, within Inuit politics there appears not to be a disintegration of women's issues, as is the case with Indian politics. Again, the impact of the Indian Act on the sociopolitical and legal positions of status and non-status Indian women is of crucial importance.

Metis, or Historic Metis, women appeared to be integrated into provincial Metis organizations. There is no national Metis women's organization. Only in Manitoba do they have a separate provincial organization. Metis informants stated that they perceived themselves as politically represented by Metis organizations rather than by NWAC. However, they strongly supported NWAC's actions undertaken to change the Indian women's lot (cf. Women of the Metis Nation, 1986). Despite the fact that the Native Women's Association is primarily an Indian women's organization, its political achievements have an impact on the position of all aboriginal women in Canada.

3.5 The Constitutional prelude and the struggle for Indian women's rights in the early 1980s

Since the late 1970s there have been two political avenues in Canada through which NWAC was able to discuss Indian women's rights: first the constitution repatriation process which started in 1978; and second, the revision process on Indian women's rights in the Indian Act since 1976. Although these processes are separate from one another, they tended to influence one another strongly. Parliament wanted the sex-discriminatory sections of the Indian Act removed before a Canadian charter of human rights, as a constitutional part, came into force. The Dept. of Indian and Northern Affairs commented in the following manner: 'While the existing membership system may have been in keeping with the mores of the time in which it (the Indian Act, LK) was established, it is no longer acceptable in a time which supports equal rights and treatment for everyone, regardless of sex or marital status' (INAC, 1982, p. 2).

When the Trudeau government took over political leadership in the spring of 1980, it declared its intent to pursue an Indian Act amendment in order to restore Indian women's rights. The issue of sexual equality for Indian women had been intensified since the 1970s and could not be ignored anymore (Romanov, 1985, pp. 73-76; Sanders, 1985, p. 158). The Sub-committee on Indian women and the Indian Act resumed its work in preparing an Indian Act amendment and released its report in 1982.

The Lovelace case and the 'Option Clause'

While the legislative and the constitutional processes were going on, in which equality rights for all women - including those of aboriginal women - were to be comprised, the federal government was expecting the U.N. Human Rights Committee's decision on the Lovelace case. It anticipated this decision by considering a moratorium on the sex-discriminatory sections of the Indian Act in July 1980 (INAC Communique, 28/7/81). International human rights instruments are not legally binding since there are no sanctioning powers. However, they function as a strong moral imperative, particularly as concerns relatively young democratic nation(s)-states.

In the 'Option Clause' it was stated that Indian bands could request the Minister of DIAND to suspend sections 12(1)b and

12(1)aIV, the latter being the double-mother rule (25). The Option Clause came into force when the United Nations communicated its decision on the Lovelace case in 1981. However, the clause was only an interim measure in order to bridge the period until the Indian Act was amended. Furthermore, it had no retroactive effect, and the initiative for a suspension of the sex-discriminatory provisions of the Indian Act was left entirely with the band councils. In view of the problems women had with band councils, described earlier, it was expected by NWAC that the Option Clause would hardly be used by a majority of Indian band councils, let alone all (26). Thus, the legal status issue became more and more a political issue on the local community level, and Indian women appeared to be subject to punitive actions of the chiefs and band councillors (cf. Silman, 1987, pp. 100-101; Two-Axe Early et. al, 1981, p. 37).

In July 1981, the U.N. Human Rights Committee informed the Canadian government that it had been found in breach of article 27 of the International Covenant on Civil and Political Rights, for denying Lovelace Indian band membership and the right to return to the reserve. The committee's decision only dealt with the right of Indian people to determine their own membership, which means aboriginal self-government, and not with sex discrimination against Indian women in the Indian Act, since Lovelace had already lost her Indian status before Canada ratified the Covenant in 1976 (Burrell & Sanders, 1984, p. 41; INAC Communique, 8/9/82; Kallen, 1982, p. 227). Despite the fact that the responsibility for initiating sex discrimination against Indian women had largely been with the federal government for more than a century, the problems resulting from it for Indian women since the 1970s appeared to be found largely on the local as well as on the national level of Indian politics. Notwithstanding the existence of mechanisms not to implement sex-discriminatory regulations, the majority of Indian bands chose otherwise. Furthermore, Indian women were seriously hampered in expressing their views through the political channels of

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25) The Minister could do so, without the approval of the House of Commons and the Senate, on the grounds of section 4(2) of the Indian Act of 1970 (see Appendix 1)

26) Numbers and percentages of bands which used the Option Clause vary according to the time frames and sources used By November 1984, the last time that the Clause was used, some 19% of the bands had opted out of section 12(1)b, whereas some 53% had opted out of section 12(1)aIV (Holmes, 1987, p 6, note 6, NWAC Newsletter, 1,3, 1982 p 18, ONWA, 1982, p 35 and 1984)

male-dominated aboriginal organizations. Prevailing male chauvinist attitudes by Indians themselves became the most urgent problem for women to be solved, since legal barriers for women's equality were expected to disappear soon.

The report of the Sub-committee on Indian Women and the Indian Act

In September 1982, the following recommendations with respect to an Indian Act amendment were made by the Sub-committee on Indian Women and the Indian Act:

1. Children with at least one parent with Indian status, whether born illegitimate or legitimate, were to receive status and band membership (cf. section 11(1)e of the Indian Act, 1970).
2. Non-Indian spouses were not to receive status in the future and therefore section 11(1)f should be removed from the Indian Act. However, persons who had gained status through this section would not lose it. The Native Women's Association did not agree with this recommendation. It argued that the Sub-committee wanted to continue using legal criteria to determine Indian identity instead of using the Indian Act to restore Indian sociocultural self-identifying criteria (cf. ONWA, 1984).
3. Band councils should be given the right to decide upon band membership - in particular referring to non-Indian spouses - and should receive extensional powers to determine civil and political rights on reserves. How this should be operationalized was not discussed since this was considered an aboriginal self-government issue to be discussed in the constitutional process on aboriginal matters.
4. Section 12 of the Indian Act was to be removed. Persons who had lost their status under section 12(1)b or 12(1)aIV (double-mother rule) should have their Indian rights, status, and band membership restored, including first generations.
5. Section 14, regarding the involuntary transfer of band membership, should be repealed. Spouses should be allowed to choose band membership in either one of the bands and their offspring should be able to choose band membership upon majority.
6. Section 109(1), regarding involuntary enfranchisement of wives

and minor children, should be removed. Persons who had lost their status under this section should be able to regain their status and band membership. Furthermore, section 109(2) and (3) should be repealed (House of Commons, 1982a, Issue # 2, pp. 44-57 and 1982b, pp. 34-40; see Appendix 1).

At the time when the Sub-committee released its report the Dept. of Indian and Northern Affairs had estimated that some 60,000 persons were eligible for reinstatement. This number included over 55,000 '12(1)b women' and their children (INAC, 1982, p. 18). This number proved to be grossly underestimated once reinstatement legislation was established in 1985.

Before the proposed Indian Act changes could be discussed and approved in Parliament, they were overshadowed by the constitutional process on aboriginal matters which began right after the Constitution repatriation on April 17, 1982.

Since all legal barriers for women's equality with men in general, and for Indian women's equality with Indian men in particular, were expected to disappear soon with the establishment of a new Constitution Act, NWAC realized that it should focus on the practice of gender inequality at the community level. As a consequence, it had to redirect its political strategies towards Indian people themselves in order to seek its main goal: Indian rights for Indian women.

By the time that NWAC was developing new strategies it had also become the only national aboriginal women's organization in Canada. The association aimed to have a united aboriginal women's front against the NIB in the constitutional process on aboriginal matters. Hence, it sought the support of Metis and Inuit women as well. The National Committee on IRIW stopped being a national political organization in the spring of 1981 and continued its existence the way it began, as an Alberta Indian women's group, 'Indian Rights for Indian Women'. After 1981, NWAC's official political mandate became to define constitutional aboriginal rights, as relevant to women, and to seek legislative changes of all sex-discriminatory regulations in the Indian Act (NWAC Newsletter, 1,2, 1981, p. 5).

It appeared that the National Committee on IRIW had serious financial problems and that its membership had gradually been amalgamated into the organizational structure of NWAC. The latter organization was increasingly accepted by both insiders and outsiders

as the representative body of aboriginal women in Canada (Richardson, 1981).

The Constitution repatriation process

In October 1978 the federal government invited the NIB, NCC and the ITC to attend a First Ministers' meeting on the Constitution. In a proposed amendment of the Constitution, Bill C-60, a provision ensured the recognition of aboriginal rights (27).

The aboriginal rights issue proved to be a controversial issue among provincial governments, of which the majority wanted it to be dropped from the constitutional agenda. The federal government, however, was prepared constitutionally to guarantee treaty rights, self-government rights, and aboriginal peoples' political participation in the parliamentary system. Due to strong lobbying efforts of the three national aboriginal organizations, aboriginal rights were included in the constitutional proposal under section 34 (28). However, when no consensus could be reached among the provinces, the federal government offered a new constitutional proposal on November 5, 1981. Previous sections pertaining to equality rights of women (sections 15 and 28) and those of aboriginal peoples (section 34) were left out in the new proposal ('Vancouver Sun', 24/11/81) (29). Section 28 provided for special guarantees that equality rights could not be overruled by the provinces. Section 34 pertained to the aboriginal rights of the Indians, Inuit, and Metis although they were not specified. The two issues combined a powerful lobbying force and public support. The federal government operated a political strategy of 'no entrenchment of aboriginal rights, no sexual equality guarantee' in order to seek a consensus among the provinces on

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27) Constitutional negotiations started somewhere in the mid-1970s at a time when Quebec separatism and western economic development alienation strained Canadian unity, bringing the Trudeau government to realize that a Constitution renewal was imperative (Romanov, 1985, p 73).

28) Lobbying efforts contained international as well as national actions, such as: the Constitution Express; Indian delegations visiting the U.N office in New York; and the bringing of cases before the British Court of Appeals (Sanders, 1985, p 178).

29) For more information on the Constitution repatriation process, see section 'Newspaper and magazine articles, and press clippings', with special reference to newspaper articles of November 1981.

aboriginal rights, and to remove the obstacles to a fast repatriation of the Constitution. The feminist lobby was too strong to be neglected by provincial governments. Hence, women's issues were used as an instrument to change the Constitution towards an inclusion of aboriginal rights.

During the Constitution repatriation process, the relation between the NIB and NWAC became less strained. The NIB recognized the Native Women's Association and realized that Indian women's rights were a pressing issue. The NIB realized that, although it still considered equality rights irrelevant to the aboriginal or Indian rights issue, it had to deal with them. The federal government intended to pursue Indian Act changes in this respect, with or without the consent of the NIB. Hence, the organization realized that it had to come to better terms with the Native Women's Association. When, in May 1980, NWAC's national office was established, NIB offered office space to the Executive.

Despite the fact that NWAC's relationship with the NIB had changed for the better, it remained tense. Sharing of office space took place only for a year. It was felt that there were still no guarantees that aboriginal women's views were fully accepted since male leaders upheld subtle and double standards in their thinking and practices, and did not lend credence to the viewpoint of NWAC (ONWA, 1982, pp. 68-69). A remark from a NIB leader in Ontario towards the President of the Ontario Native Women's Association, in 1982 illustrates Indian male leaders' general ignorance of Indian women's political griefs and goals. He declared that he was only prepared to put Indian women's issues on the political agenda which were 'not political' (ONWA, 1983, p. 27).

Separate actions by the national office of NWAC were felt to be necessary because enforcing changes at the band level, where men still dominated politics, was too hard to do. It was only outside the male dominated political Indian structures that women could seek political positions (NWAC, 1985b, p. 6). While the NIB conducted separate lobby activities, NCC, ITC, and NWAC formed the Aboriginal Rights Coalition to conduct their lobbying activities. The three organizations agreed upon a sexual-equality guarantee for aboriginal women. Feminist groups, which lobbied for a restoration of section 28, were organized in the National Action Committee on the Status of Women. NWAC did not cooperate with the latter, and stated that it was looking for a sexual-equality guarantee in section 34, referring to aboriginal rights (cf. 'The Native People', 20/3/81).

Despite the disassociation of NWAC from the women's movement, the organization was only able to make its political claims because the women's movement had cleared the ground for a highlighting of women's issues since the 1960s.

The Canadian public was increasingly prepared to support entrenchment of aboriginal rights in the Constitution, which proved that aboriginal organizations were doing a good job ('Globe and Mail', 24/11/81). Politicians complained that lobby groups had too much impact on political decisions. On November 23, sections 28 and 34 were drafted in the final constitutional proposal with the consent of the provincial governments. Section 34, however, became section 35, with the addition of the term 'existing' aboriginal rights (30). The new wording was not agreeable to either one of the national aboriginal organizations. Particularly, NWAC feared that the wording of section 35 of the Constitution Act could be interpreted as the continuation of legal discrimination against aboriginal women. Because of a provision in the Constitution Act of 1982, political negotiations between aboriginal organizations on one hand and the federal and provincial governments on the other hand were to continue, but within a new framework: the constitutional process on aboriginal matters.

30) The inclusion of the term 'existing' was the initiative of the Alberta government. However, nobody knew what 'existing' meant (Hawkes, 1985, p. 7).

> 'The legal provision of rights does not guarantee "equality", but it is an essential prerequisite for women's full participation in political, economic, social and cultural development - from which equality can follow' (Seager & Olson, 1986, p. 101).

> 'Having been classified as a Metis, as a non-status person, and now as a status Indian, having lived in a city all my life, and having to deal with discrimination whether I was or was not a status Indian, I believe that all native people, including women, have aboriginal rights in this country no matter where they live, no matter what distinctive category has been assigned to them' (Aggamaway, former president of NWAC, 1983, p. 68).

In this chapter, I will explore aboriginal women's rights within the Constitution Act of 1982. Constitutional documents are more than sets of procedural rules and formalities. They are important culturally constructed political symbols that codify the essence of national and state communities (Gibbins, 1988, p. 7). The Constitution Act of 1982 vitally affects aboriginal women in Canada and gives them the opportunity to (re)define, as women and as aboriginal persons, their role in the Canadian political structure.

In the first section I will describe perceptions of aboriginal persons in general on law. To them it has never been solely a technical matter, for it has profoundly shaped their relationship with Canadian society at large. Moreover, in particular referring to Indians, law appears to have had a crucial impact on the creation of their (self)identity.

The second section contains a review of particular sections of the Constitution in order to assess how aboriginal women are affected by supreme law. Lastly, I will discuss NWAC's perspectives and political goals with respect to aboriginal women's rights in the Constitution Act.

4.1 Aboriginal peoples and the law

Law is often perceived as a technical subject, relevant only when conflicts result in recourse to lawyers or in court proceedings. This

rather narrow perception obscures the all-pervasive effects of law in society. Law in itself is a cultural phenomenon through which human problems are interpreted as legal cases (cf. Duclos, 1990, p. 371). It has an inherent dynamic quality. Legal interpretations may vary over time and within the contexts used. They are affected by social practice and reform while at the same time they may have an impact on social reality itself. While law, as an agent of social control, maintains the status quo of power relations among groups in society, it has at the same time the potential to affect norms and attitudes and provides a framework for political competition. Thus, it may weaken or reinforce the claims of particular groups in society (cf. Palley, 1978).

As we have seen in previous chapters, aboriginal peoples in general, and Indian people in particular, have gradually learned to cope with the authority of the Canadian state and its law output. The totality of Canadian jurisdiction pertaining to aboriginal peoples is rather complex. However, whatever concerns aboriginal peoples as a group or as individuals may express - whether in the socioeconomic, cultural, or political sphere - it always stands in relation to law. In fact, aboriginal identity issues have been seriously affected by legislative processes in Canada. For instance, the inclusion of the Metis in section 35 of the Constitution Act as an aboriginal people had a considerable impact on the positive self-identity of those involved. Some (male and female) informants, who had previously identified themselves as non-status Indians, began to re-identify themselves as Metis.

Strictly speaking, law cannot determine experiences of people. The case of Canada's Indians, however, has proved otherwise. The Indian Act, in its self-executing manner, has controlled Indian people's lives in all aspects 'from the cradle to the grave'. Through the Indian Act, Indians have been socialized to be dependant on the federal government because they have lost their autonomy. Therefore, it is no wonder that Indians turn to that government whenever they seek important changes in their lives. The only way to do away with this experience is to stop being a status Indian, or to identify as an aboriginal person. Indian people to a large degree had their ethnic belonging determined by law under the motto: 'the only real Indian is a status Indian'. In this sense legal status became a primordial instrument of Indian ethnic identity. Primordiality, or basic group identity according to Isaacs (1975, p. 31): '(...) consists of the readymade set of endowments and identifications which every

individual shares with others from the moment of birth (...)'. On the other hand, in view of the perceived power of the Indian Act, an increasing belief has developed that legislative changes would automatically affect and alter social reality. Within this framework it must be understood why aboriginal peoples in general, and Indian people in particular, focus primarily on legal changes whenever they seek changes in their socioeconomic, cultural, and political lot in Canadian society. Furthermore, since international as well as national law after the Second World War gave room to indigenous peoples' political aspirations, it follows that the involvement of aboriginal peoples within law reform processes in Canada increased.

Canada's aboriginal peoples are not unique in their perception of law as a valuable instrument to promote changing norms and attitudes, providing for mechanisms and procedures for orderly change and for implementation of policies (cf. Palley, 1978). In particular since the Second World War, law has been increasingly used by both states and supra-national governmental organizations, such as the United Nations, to alter prevailing norms and attitudes (1).

Whether law in itself is indeed one of the best instruments to affect social reform or whether it reflects already established social reform, is an interesting topic of debate for both jurists and anthropologists (2). However, this is too far beyond the scope of this study. What is relevant within the framework of this study is that Canada's aboriginal peoples have come to perceive law as an assimilative, restrictive, and segregationist instrument that, paradoxically, legitimizes their special status in society while at the same time being used as a valid instrument of social change.

The Constitution Act of 1982, being the supreme law in Canada, through sections 35 and 37 provides for recognition of the aboriginal peoples and their distinct rights. At the same time it sets out procedures for discussing the nature of aboriginal rights and for the

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1) Some examples of U N instruments are the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Declaration of the Elimination of All Forms of Racial Discrimination (1963), the Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966) (ILRC, 1984).

2) MacDonald (1975, p. 603) argues that law is the best instrument of change whether it lags behind and is revised only in response to the demands of society, or whether it precedes and encourages the development of new social attitudes. Rhode (1986), however, claims that focusing on law to change social attitudes is of limited value only since there is always a difference between 'de jure and de facto' equality (cf L. Green, 1970)

implementation of policies that are in agreement with the meaning of aboriginal rights. The entrenchment of aboriginal rights is perceived as a major victory by aboriginal peoples. The fact that the federal and provincial governments were willing to discuss their aboriginal self-government aspirations was a matter unheard of a decade ago. The Constitution Act is very important since it opened a new era of political relationships between them and Canadian society at large. To aboriginal women, and particularly to Indian women, the Constitution Act of 1982 is significant because it links sexual equality rights to aboriginal rights.

4.2 The Constitution Act, 1982

The premise of this section is to assess whether aboriginal women have strong legal guarantees of sexual equality in relation to aboriginal rights. This is perceived as a prerequisite in order to ensure their full participation in aboriginal communities as well as in Canadian society at large. This section is largely a synthesis of material gathered from legal documents and interviews with lawyers and legal advisors of national aboriginal organizations. The text of the Constitution Act, which we are dealing with, was adopted by the House of Commons on December 2 1981, and by the Senate on December 8 1981. On April 17 1982, the resolution was signed by Queen Elizabeth II, thereby completing the Constitution repatriation process.

Part I of the Constitution Act, being sections 1-34, is referred to as the Canadian Charter of Rights and Freedoms. The Charter sets out basic guarantees of rights and freedoms as they apply to all Canadians, including aboriginal persons (3). Furthermore, the Charter reflects Canada's international obligations through ratification of various international covenants and declarations (L. Green, 1983, p. 343).

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3) Gormley (1984, p 30) states. 'We all posit a much closer connection with morality in those rights we call human rights. The very term "human rights" suggests that some rights inhere in the human person, not by virtue of their proclamation by positive law, but by virtue of certain realities within what might be termed the pre-legal human condition'. This is also referred to as a natural law position.

> 'Section 15(1). Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability' (Govt. of Canada, 1981, p. 6).

Equality rights protect citizens from discrimination by governments. Section 1 of the Constitution Act states that equality rights are subject to limitations, such as reasonable limits which can be democratically justified. Furthermore, section 33 provides loopholes for the provinces to legislate without total agreement with Charter rights (Govt. of Canada, 1981, p. 3, pp. 10-11; cf. Petter, 1989, p. 152).

In 1928, women in Canada became legal persons. In 1982, their gender became constitutionally equal to that of men. These milestones were only achieved after a long period of women's struggles (Mahoney, 1988, p. 167).

Gibson (1985:45) argues that before the establishment of the Charter there was no constitutional protection for aboriginal persons against discrimination based on their aboriginal ancestry. Section 91(24) of the British North America Act provided the Canadian state with the constitutional right to discriminate, particularly against Indian persons. However, the Indian Act is now brought under consideration of the Charter.

Section 15 was not to come into effect until three years after patriation of the Constitution (April 17, 1985) to enable the federal and provincial governments to make the necessary adjustments to their laws. One of the many reasons for the delay of three years was that the Indian Act had to be revised and that postponement was therefore necessary.

Section 15 makes it difficult for the courts to restrict sexual equality. The listed grounds, such as race or sex, serve to alert the courts that any form of discrimination should be combatted in a more rigorous fashion than was previously done. For instance, marital status is not spelled out in the equality rights provision, but it does not mean that discrimination is allowed. Should an Indian woman ever decide to litigate on the grounds that the sex-discriminatory provisions of the Indian Act violate section 15 of the

Charter (after April 17, 1985), it is most likely that the Supreme Court would be compelled to declare the particular sections of the Indian Act invalid. Thus, a decision such as in the Lavell case could not be repeated (see chapter 3.2; NWAC Newsletter, 1,5, 1982, p. 7).

Sexual equality rights in section 15 refer to individual human rights which are collective, or at least quasi-collective, human rights as well. Hence, there is not so much a discrepancy between sexual equality rights, that are individual rights, and aboriginal rights, being collective rights. Conflicts arise between female and male aboriginal rights. Women are discriminated against on the basis of their collective inferior position in society. Indian women, as a group, have been forced to suffer as a result of the sex-discriminatory provisions in the Indian Act. Furthermore, rights for women have only been gained through collective action and through the intervention of the state (Richstone, 1983, pp. 42-43). Affirmative action programmes, set out in section 15(2), will enable aboriginal women in general, and Indian women in particular, to further their needs and goals as a collectivity (ibidem, p. 52)(4).

Section 15, albeit crucially important to aboriginal women, is not of primary concern to them. Whereas the women's movement in Canada focuses on section 15, the aboriginal women's movement focuses on section 25 of the Charter. The reason for this difference may be that equality rights, such as are formulated in section 15, are perceived as non-aboriginal liberal democratic concepts that may contravene cultural traditions of aboriginal peoples. For instance, the exclusive right of Iroquois women to choose a (male) chief violates the rights of Iroquois men as stipulated in section 15 of the Charter. Nevertheless, we should not underestimate the power of section 15. It dictates foremost a repeal of all sections in the Indian Act which discriminate against Indian women on the basis of their sex and marital status.

> 'Section 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons' (Govt. of Canada, 1981, p. 10).

This section is meant to ensure that 'person' includes females as

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4) The Task Force Report of NEDAB (1985) which deals with economic development plans for aboriginal women provides a good example.

well as males, and it should limit sections 1 and 33 of the Constitution Act. Thus, section 28 does assert primacy of sexual equality rights over all other Charter rights, and in this respect it is of importance to aboriginal women as well (Gibson, 1985, pp. 48-49; NWAC Newsletter, 1,5, 1982, pp. 8-9).

Section 28 is a complicated provision despite its shortness. In particular the term 'notwithstanding' could eventually create problems. Although it may be presumed that the courts will subject the collective rights of aboriginal peoples to the individual's equality rights, there is no absolute guarantee. Furthermore, section 28, no matter how important to aboriginal women's rights, could be used to debilitate collective rights of aboriginal peoples (L. Green, 1983, p. 352).

Aboriginal peoples' collective rights

> 'Section 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement' (Govt. of Canada, 1981, p. 9).

This section creates an exemption for aboriginal rights from being subjected to Charter rights. It ensures that section 15 will not be used to strike down any traditionally recognized collective rights of the aboriginal peoples (5). However, section 25 does nothing to advance the position of the aboriginal peoples (Gibson, 1985, p. 46). Non-aboriginal persons cannot litigate on the grounds that aboriginal peoples in Canada have more rights than other Canadian citizens. Under international law, equality is not a formal concept. Not 'de jure' but 'de facto' equality is looked at. Minorities must always have the rights of the majority, at the least. Thus, section 25 of the

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5) Ethnic (immigrant) groups in Canada cannot claim collective rights, other than the quasi-collective rights spelled out in section 15 of the Charter. The aboriginal peoples' rejection of being classified as ethnic group stands in close relationship to section 25 of the Charter.

Charter cannot be declared invalid because aboriginal peoples have additional rights (L. Green, 1983, p. 346).

Aboriginal rights also refer to the collective right of aboriginal peoples to decide group membership for themselves. The Indian Act, therefore, violates section 25 of the Charter, for it withholds Indian people from determining Indian status and band membership as long as the Indian Act remains intact. Within this framework, a repeal of the Indian Act is necessary as well (6). However, the important question is whether section 25 is subject to the equality rights of individuals. If not, then the rights of aboriginal women in aboriginal constitutions could be easily ignored. Indian self-governing bands may design constitutions that provide for equality rights of Indian men and women, but they could be easily modified to do away with the rights of women by majority consent of the band. Given the internalization of patriarchal notions as a result of the sex-discriminatory provisions in the Indian Act, section 25 could be a potential risk for Indian women not to have their equality rights ensured by their own communities (7). Furthermore, if section 15 does not overrule section 25 it would mean that Indian self-government would not allow for uniformity in equality rights for Indian men and women (Richstone, 1983, p. 55). As the president of NWAC argued: 'Band governments must not mimic the discriminatory practices of the dominant governments' (NWAC Newsletter, 1, 8, 1983, p. 3). By referring to the traditional Indian motherhood concept, she made clear to Indian bands that in future Indian self-governing institutions there cannot be sexual inequality since this is un-Indian.

According to Richstone (1983, pp. 15-17), section 28 points also to the awareness of law makers that aboriginal women's rights need special protection and that section 15 should not be overruled by section 25, despite the fact that aboriginal peoples and their governments will not be bound to all provisions of the Charter. According to Sanders, (1983b, p. 327), however, the opposite may well be the case.

The relationship between sections 15 and 28 - in providing for

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6) The decision in the Lovelace case already referred to the self-determining rights of minority groups, particularly in relation to membership

7) However, legal decisions, whether national or international, have been hostile to restrictions on individual human rights and freedoms by appeal to collective rights (Richstone, 1983, p. 55).

(individual) sexual equality rights - and section 25 - in providing for (collective) aboriginal rights- is, notwithstanding the above, seriously strained. Given the experiences that in particular Indian women have as a result of their dual discrimination, the Charter presented them with a dilemma. What rights should they let come first, those referring to their femaleness or those referring to their aboriginal ancestry?

Feminist groups have continually argued that sexual equality under all circumstances should prevail over aboriginal self-government, being a collective aboriginal right. The National Indian Brotherhood, and later the Assembly of First Nations, has always taken the position that no constitutional part may touch upon the aboriginal peoples' right to self-government, including sexual equality rights. To aboriginal women, and most particularly Indian women, the situation is not that clear at all. They cannot escape conflicts in engaging their gender and cultures together. The implications of the sex-discriminatory status regulations in the Indian Act play a crucial role in their experiences of conflict and dilemma. (cf. Duclos, 1990, p. 369).

Aboriginal peoples and aboriginal rights

> 'Section 35(1). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2). In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada' (Govt. of Canada, 1981, p. 11).

Section 35, part II of the Constitution Act, is perceived as the most important victory by aboriginal peoples. Its entrenchment was vigorously fought by aboriginal peoples in particular during the November 1981 Constitution repatriation upheavals (see chapter 3.5). Because of its entrenchment, aboriginal peoples regained new pride in their distinct cultures and identities. Nevertheless, section 35 forces the aboriginal peoples to classify themselves into Indians, Inuit, and Metis. As already stated, the sociocultural division between Indians and Metis is not clearcut at all. And furthermore, section 35

does not give any clue as to whom the terms 'Indians' and 'Metis' refer to. Whether non-status Indians and Pan Metis, who have no recognized special rights, are included in section 35 remains unsure (8). Although section 35 is not part of the Charter, there is no doubt that the rights described in it are as effectively enforceable by the courts as the charter rights (Gibson, 1985, pp. 46-47).

The term 'existing' aboriginal rights in section 35 creates ambiguity. It could refer to aboriginal rights established before the Constitution Act, to rights established after the Constitution Act, or to all aboriginal rights as they exist from time to time (NWAC Newsletter, 1, 5, 1982, p. 10). With reference to aboriginal women, the term 'existing' aboriginal rights could entail the risk that it will be interpreted as the perpetuation of existing legal discrimination of Indian women in particular as stipulated in the Indian Act.

The meaning of aboriginal rights is not clear. As already stated in chapter one, the federal government is inclined to interpret them as socioeconomic benefits whereas aboriginal peoples in general refer to them as a multitude of socioeconomic, political, legal and cultural rights. More specifically, these rights are integrated in the aboriginal peoples' strife for aboriginal self-government which has become the single most important issue on the agenda for section 35 discussions. It is difficult to be precise about what aboriginal self-government is. Most generally, aboriginal self-government is a collective right of the aboriginal peoples to control their lands, their resources, their own destiny and their own political future. It is a decentralistic concept since individual aboriginal communities are given the right to determine their own membership and political future. Thus it allows for an upgrading of particularism and Indian nationalism (9).

Aboriginal self-government, according to aboriginal peoples, should not be conceived as part of a separatist movement but as part of an emancipation movement in which aboriginal communities seek

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8) The Native Council of Canada, as the political representative body of non status Indians and Pan Metis, was invited to partake in the constitutional process on aboriginal matters Based on this fact, one may assume that its constituency is recognized as aboriginal persons. However, there is no absolute guarantee that the courts will agree.

9) Very often, it is the minority of a particular group that creates the outward (stereotypical) identity of the entire group The Red River Metis and the prairie Indians are good examples Self-government, according to aboriginal peoples, will stimulate persons to express their inward identity rather than their stereotypical identity Thus, aboriginal self-government will foster the expression of self-identity and may instigate altered perceptions of non-aboriginal persons on aboriginal identity

equality relationships with the federal and provincial governments of Canada, with the ultimate goal to survive as a community. Some aboriginal leaders stress that aboriginal peoples have always been self-governing. They mean to say that it is an inherent right of aboriginal communities that cannot be extinguished by legislation. This is a natural law position. However, they state that they distrust the government and, therefore, want it explicitly entrenched and guaranteed in section 35 of the Constitution Act. The aboriginal self-government concept can be further distinguished into Indian, Metis, and Inuit self-government concepts. The Indians seek aboriginal governments on reserves. The Indian Act abrogates their self-governing rights and should therefore be repealed according to AFN. As long as the special status of Indians is upheld through section 35, the Indian Act can be repealed. The Metis seek guaranteed representation in legislation for those who live in urban areas, and a guaranteed land base and Metis government for the Historic Metis. The Inuit conceive aboriginal self-government in terms of a regional public government (as long as they are in the majority) and settlement of comprehensive land claims in which Inuit self-government is entrenched as an explicit right.

Whereas the collective rights of aboriginal peoples are referred to in sections 25 and 35, sections 15 and 28 pertain to the equality rights of individuals. There is an obvious tension between individual and collective rights of aboriginal peoples that creates a serious dilemma for Indian women in particular. If they give priority to women's rights, they might endanger the collective (self-governing) rights of Indians. Should they give priority to the collective rights of Indians, they risk sex discrimination by their own people. As a result of the Indian Act system, collective rights of Indians as a group collide with individual Indian women's rights.

The constitutional process on aboriginal matters

> 'Section 37(1). A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.
>
> (2). The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters

that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item' (Govt. of Canada, 1981, pp. 12-13).

This section, part IV of the Constitution Act, guarantees that aboriginal matters are dealt with within one year of patriation. It is important in various respects:

1. It facilitates a constitutional amendment of aboriginal rights and, as a result, the solving of legal and political problems (10). This is very important to the representative aboriginal organizations since they seek legal guarantees through political dialogue rather than through litigation.
2. In view of the media coverage of such a conference, the public is made aware of the claims of the aboriginal peoples. Aboriginal persons who follow the constitutional process on aboriginal matters have their positive self-identity revived. The fact that they see their leaders sitting at the same table with the prime ministers of the federal and provincial governments makes them feel proud.
3. Aboriginal peoples, through this political dialogue, are enabled to communicate more frequently and to exchange their political goals.

The federal government invited the Assembly of First Nations, the Native Council of Canada, and the Inuit Tapirisat of Canada to participate in the 1983 First Ministers' Conference (11). A few days before the conference took place, the Metis National Council was

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10) Section 38 of the Constitution Act stipulates that constitutional amending requires (1) resolutions of the House of Commons and the Senate and (2) resolutions of legislative assemblies of at least two-thirds of the provinces representing a Canadian population over 50% (Govt of Canada, 1981, p 13) It implicitly gives power to the provinces to decide on aboriginal matters, since they have become largely constitutional matters As long as aboriginal matters concern legislative affairs, such as the Indian Act, the federal government remains solely responsible for aboriginal peoples (cf section 50 of the Constitution Act, in Govt of Canada, 1981, p. 17)

11) The constitutional branch of ITC is the Inuit Committee on National Issues (ICNI) The NIB changed its name to Assembly of First Nations (AFN) in November 1982 From then on, the organization officially represented Indian bands instead of status Indian individuals.

established and also invited to participate. The federal government had not invited NWAC despite recognition of its title and representativity. Furthermore, it was not recognized as a national representative body since it represented only half of the aboriginal population in Canada. The Native Women's Association was only accorded observer status. Nevertheless, the federal government recognized the need to address aboriginal women's rights within the constitutional context.

Each one of the four aboriginal organizations received funds to do research on aboriginal rights, and separate, extra, funds to study sexual equality rights (12). This type of funding reflected the federal government's efforts to solve the problems pertaining to equality rights of aboriginal women. In order for the organizations to receive constitutional funding with respect to sexual equality rights, the following requirements had to be fulfilled: the organizations' work plan had to provide for projects explicitly related to aboriginal women's concerns; and these work plans had to meet the concerns of aboriginal women's organizations affiliated with them (SOS, 1985, p. 21).

The four aboriginal organizations that were invited to partake in the constitutional process on aboriginal matters have much power. Opinions expressed by the leaders of those organizations do not necessarily have to be in full agreement with those of the constituents. Whatever the aboriginal political leaders achieve is nevertheless applicable to the organizations' constituency as a whole (13). Thus, within the constitutional process on aboriginal matters, the aboriginal leaders gain more power, since their achievements are decisive and have practical implications for the entire aboriginal population in Canada.

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12) Each aboriginal organization received Cdn $ 845,000 for aboriginal rights, and Cdn. $ 105,000 for sexual equality rights The MNC and NCC kept the money to themselves ICNI transferred it to the Inuit Women's Association The AFN signed an agreement with NWAC to transfer but until the fiscal year 1985, NWAC had received but Cdn $ 26,000 (Krosenbrink, 1986, pp 15-16, pp 22-23)

13) Some aboriginal groups contest the legitimacy of negotiations between the federal and provincial governments and in particular the AFN A good example is the Coalition of First Nations (CFN), a treaty Indian coalition in western Canada, established in 1983 It argues that constitutional conferences on aboriginal matters are illegitimate since treaty Indians only have a bilateral relationship with the British Crown (cf Robinson & Quinney, 1985)

4.3 What does the Native Women's Association of Canada want?

After having studied the particular sections of the Constitution Act pertaining to aboriginal women's rights, we are able to assess whether governments, aboriginal as well as non-aboriginal, are able to restrict rights for women and whether provisions already in place secure adequate guarantees for them. Indian women, as well as Metis and Inuit women, want constitutional protection for aboriginal women to be clear, unambiguous, and adequately secured. This holds particularly for Indian women, given the political sensitivity of the issue of sex discrimination pertaining to them. As a status Indian man confirmed to me, equality rights for aboriginal women is 'politically a sexy issue' (interview 3/4/86).

The Native Women's Association wants sexual equality for particularly Indian women to be guaranteed. Hence, we have to find answers to the following questions: what does sexual equality mean to NWAC and its constituency; and, what criteria are used to measure the degree of equality? NWAC is primarily concerned with constitutional protection of aboriginal women's rights. The association considers law a valid instrument in order to seek changes in women's positions within their own communities. Constitutional law is considered fundamental since federal legislation and administrative procedures, as set out in the Indian Act, cannot be resolved before the constitutional rights of women are resolved. Sexual equality of aboriginal women vis-a-vis aboriginal men is not explicitly dealt with in the Constitution Act of 1982. As a result of the sex-discriminatory status implications of the Indian Act, this presents problems for Indian women. A spokesperson of the Ontario Native Women's Association declared at a conference in June 1982: 'No Aboriginal Rights - No Indian Nations' (ONWA, 1983, p. 23). Implicit, but nevertheless clear, reference was made to the traditional Indian motherhood concept. Without sexual equality rights for Indian women, being the primary transmitters of Indian cultures, Indian nationhood will be further endangered.

NWAC focused on seeking a sexual equality guarantee in section 25 and/or section 35 of the Constitution Act, both pertaining to

aboriginal rights (14). Furthermore, the Association argued that the term 'existing aboriginal rights' should not be too narrowly defined so as to deny the rights of non-status Indian persons. As a matter of fact, their Indian rights should be restored first. Otherwise, notwithstanding sexual equality guarantees since 1982, sex discrimination would be perpetuated indirectly. Lastly, NWAC held the position that the terms 'Indians' and 'aboriginal peoples' should reflect all persons who identify themselves as aboriginal, and not just those who are recognized as legal categories (cf. NWAC Newsletter, 1, 8, 1983, p. 3).

The issue of aboriginal self-government is recognized as a legitimate goal, both by the Canadian government and by the public. NWAC too regards aboriginal self-government as a political priority. However, the association had a fundamental condition; the principle of sexual equality for aboriginal men and women must unambiguously and constitutionally stand above aboriginal self-government. This guarantee was perceived as necessary. Indian women could still be in trouble with band councils under self-government (Silman, 1987, p. 219). Although Indian men and women were unanimous in their statement on the vital roles of Indian women for the perpetuation of their cultures and community life, the practice of sex discrimination by band councils proved in reality to be different from ideology.

With respect to Indian self-government, band membership is of crucial importance. The AFN and NWAC agreed that band membership should be decided by Indian bands themselves. Nevertheless, under the surface of their common argument important differences of opinions were prevalent. NWAC claimed that Indian women will not accept any proposal, either by the federal government or by AFN, that will continue to deny Indian women's sexual equality. Indian women did not want to wait until Indian self-government is established on reserves, because they feared that some bands would not treat them fairly and would not be willing to restore the rights of Indian women. It is primarily for this reason that

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14) According to Rhode (1986, p 155) 'Equal rights are, at this historical moment, too restricted in legal content and too divisive in political connotations to serve as an adequate feminist agenda' In contrast to feminist groups in Canada, the aboriginal women's movement remained preoccupied with legal changes Feminist groups argue that law is of limited value only, since the consequences of gender difference are not incorporated (ibidem, p 157) Note, however, that non-aboriginal Canadian women have their equality rights already guaranteed, whereas aboriginal women are still seeking an explicit legal guarantee.

NWAC focused on a sexual equality guarantee within sections 25 and 35 of the Constitution Act. The AFN held the position that sexual equality rights for aboriginal women were not a constitutional issue. This issue should be dealt with by individual bands once self-government was operationalized. There could be two sources outside the Constitution that Indian women might appeal to in cases where self-governing bands would have designed sex-discriminatory band membership codes:

1. particular constitutions of Indian bands providing for sexual equality; and
2. recourse to an Indian commission or tribunal set up to hear complaints arising out of the exercise of Indian self-governing powers.

Sexual equality provisions in Indian constitutions, however, can be easily removed, whereas the Constitution Act sets certain rights beyond the powers of Parliament and legislatures to override. Furthermore, Indian commissions or tribunals will not guarantee Indian women that decisions will not prejudice them. Besides, cultural traditions of particular Indian nations may have dictated discrimination (Richstone, 1983, pp. 20-23). Whether sexual inequality is authentically Indian or has historically developed due to the Indian Act is not important here. Nowadays, Indian women, as well as Metis and Inuit women, do not wish to be sexually discriminated against either by law or in practice (15).

NWAC was not merely preoccupied with a constitutional amendment but with a legislative amendment as well. As long as the constitutional right of aboriginal self-government is not entrenched and guaranteed, the Indian Act was to remain a regulating force. NWAC realized that one cannot do away with the Indian Act overnight, because for several generations already many Indian persons have based their identity and existence on the Indian Act. Therefore, probably a lot of Indian bands would establish their self-government, including band membership, in agreement with Indian Act regulations. It was perceived as a prerequisite to seek sexual equality guarantees constitutionally, within the framework of aboriginal self-government, as well as within the framework of an

15) One status Indian female informant expressed doubts whether law can change people's attitudes: 'How are you going to legislate attitudes, straighten bands out?' (interview 30/1/86).

Indian Act revision. NWAC aimed eventually to procure by way of law the upgrading of sociopolitical positions of Indian women in particular. Who or whatever was going to decide upon band membership in the future, Indian women did not want sex discrimination anymore.

With respect to section 37 of the Constitution Act, referring to the constitutional process on aboriginal matters, NWAC insisted that provincial governments have no power to decide upon aboriginal matters, and that a constitutional amending formula respecting aboriginal affairs should require the consent of the aboriginal peoples. These perceptions are in agreement with those of the other four national aboriginal organizations. Based on its political goals, NWAC perceived itself to be in the best position to explain the importance of the required amendments for aboriginal women in general, and for Indian women in particular, during the constitutional process on aboriginal matters.

NWAC wanted explicit legal sexual equality guarantees for aboriginal women. In view of developing future aboriginal self-government institutions, this was considered of vital importance. To NWAC and its constituency, sexual equality comprised a whole range of issues, such as employment, political decision-making, recognition of their women's important roles in communities and according political respect by band councils, and most importantly, the equal right to transmit status and band membership to their families.The main problem for NWAC was, in view of differences of opinion with primarily the AFN, how to overcome the apparent paradox between claiming aboriginal self-government on the one hand, while requesting an external, legal guarantee of sexual equality pertaining to aboriginal rights - including self-government. Strategies used by NWAC during the constitutional process on aboriginal matters to pursue their political goals, and to solve conflicts with their male counterparts and their dilemmas resulting from their double identities, will be assessed in the next chapter.

5 THE TRADITIONAL INDIAN MOTHERHOOD CONCEPT: A STRATEGY

> 'What are the issues that we, as native women and as native people, must deal with in the future? Central to everything is sovereignty: the power to make decisions for ourselves (...). For many of us, the ultimate solution is in the exercising of our people's sovereignty according to our culture and traditions. It is our belief that only with the return of our sovereignty will discrimination be lessened. We have confidence enough in our traditions and culture to know that native women will then be able to take their rightful place in the future of our people' (Aggamaway, 1983, p. 69).

The constitutional process on aboriginal matters provided a significantly new political niche for aboriginal women and their national body, NWAC, to discuss constitutional rights as relevant to them both as women and as aboriginal persons. The Native Women's Association was denied an official seat at the First Ministers' Conferences on Aboriginal Constitutional Matters. This obviously limited the available avenues through which NWAC could pursue its political goals. However, this does not imply that NWAC was not able to play a political role within the constitutional process.

Aboriginal women in general, and Indian women in particular, became interested in the Constitution since they realized that there was far more at stake with aboriginal rights, such as self-government, than the possible loss of legal status through the Indian Act status provisions. The constitutional process, therefore, dictated more effective political representation and organizational structures, as well as reformulation of political goals and new strategies.

This chapter deals with the main strategy of NWAC in seeking the rights aboriginal women perceived as relevant. This strategy is framed within the traditional Indian motherhood concept. Before exploring this key concept, I will describe the context of political relationships between aboriginal peoples and larger society, as well as those between aboriginal men and women themselves. These relationships serve to explain why the traditional Indian motherhood concept became the most significant strategy used by the Native Women's Association within the constitutional process on aboriginal matters from 1982 until 1987.

5.1 Aboriginal peoples versus Canadian society: the development of an opposition ideology

The relationship between aboriginal and non-aboriginal Canadians can be assessed within the theoretical framework of ethnicity (1). Ethnicity can be generally defined as a process of group formation whereby culture, rather than biology, is used as a crucial boundary marker between groups within a common social context (2). However, because of its ubiquity, variety in form, scope, intensity, function, and context, ethnicity has been defined in a variety of ways (cf. A. Cohen, 1974a, p. ix). The important questions are why, how, and when do aboriginal peoples in Canada preserve their sense of distinctiveness against homogenizing pressures from larger society. I will review arguments from several authors within the ethnicity debate that might be helpful in finding adequate answers to these questions.

Yinger (1981) argues that ethnicity serves expressive functions whereby culture is used as a powerful source in conflicts over power and prestige. However, this is only possible as long as a fundamental sense of cultural connections remains (ibidem, p. 250, p. 257). Cohen adds: 'Where culture difference was formerly underpinned also by structural boundaries these have now given way to boundaries which inhere in the mind' (1986, p. 17). Canadian legislation, and particularly the Indian Act, has largely contributed to the aboriginal peoples' sense of cultural connectedness and their distinctiveness from non-aboriginal persons. Furthermore, Yinger (1981, p. 261) argues that ethnicity does not only occur in inequality situations between groups, but whenever a difficult situation arises, for example

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1) Roosens (1982, p 101) assumes that post Second World War processes of decolonization and state formation, as well as the development of international standard setting concerning the relationship between majorities and minorities, have played a role in the development of theories on ethnicity (cf. Bentley, 1987, p 45)

2) Culture may be defined as a system of symbols, publicly shared and socially established, that provide a meaningful structure in which human beings act (cf A Cohen, 1974a p xi and 1974b).

strong assimilative pressures, genocide, and extinction (3). Ballis Lal (1983, p. 158), Castile (1981a, p. xx), and Keyes (1981, p. 12) also consider ethnic group formation a realistic strategy for survival. Nevertheless, group survival as such is an underexposed, yet significant variable in ethnic group formation processes. Probably, 'survival' as a keyword in the understanding of ethnic processes is considered a too simple answer by most authors. I argue that it is not simple for colonized people to survive as a distinct group. Furthermore, survival can also be conceived as a resistance strategy.

McKay's statement (1982) on internal differences within ethnic groups is relevant when reviewing different conceptions of political interests on the part of aboriginal males and females, and particularly referring to Indian men and women. Cohen (1986, p. 13) argues that ethnic boundaries serve to represent the group's public face, thereby masking internal differences. At the same time, these boundaries enclose and incorporate internal differences.

According to A. Cohen (1974b, p. 65), all societies consist of groups in order to protect or to increase their share of power. Ethnic groups are constituted by members of interest groups who tend to make use, largely unconsciously, of cultural mechanisms to articulate their group organization (cf A. Cohen, 1974a, p. xviii; Roosens, 1982, p. 101)(4). Thus, ethnicity is essentially a political phenomenon, as the symbols of culture are used as mechanisms for articulation of political alignments (A. Cohen, 1974b, p. 97). Symbols are collective representations that are subjectively experienced, that influence human behaviour. They obtain an objective existence when they are accepted by members of the group. To individuals, symbols appear to lead an existence of their own (A.

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3) The U.N Convention on Genocide (1951), cited in Berry (1958, p. 161), and ratified by Canada, spells out that any of the following acts to destroy, in whole or in part, a national, ethnical, racial or religious group are genocidal.

1. killing members,
2. causing bodily or mental harm;
3. deliberately inflicting upon the group life conditions that may destroy them (the Indian Act was meant to be an assimilative tool),
4. imposing measures intended to prevent births, such as forced sterilization practices in western Canada (cf White, 1989), and
5. forcibly transferring children of the group to another group, such as offering Indian children in Manitoba for adoption by non-aboriginal families.

4) A Cohen tends to conceive the ethnic phenomenon in a much broader perspective. Usually, the term 'ethnicity' is restricted to describe minorities, and racial or migrant groups (cf 1974a, p. xxi).

Cohen, 1974a, pp. x-xiii and 1974b, pp. x-xi). As Spicer (cited in: Dundes, 1989, pp. 7-8) states: 'The essential feature of any identity system is an individual's belief in his personal affiliation with certain symbols, or more accurately, with what certain symbols stand for'. Thus, symbols are public and important mechanisms for the development of selfhood that can be used in various contexts (cf. Parker, 1988, p. 374).

The tendency of a group to manipulate ethnicity as a strategy to maximize their interests is always there, since all human relations bear aspects of power. The context in which the ethnic phenomenon occurs is of crucial importance since ethnicity varies in degree and is always interdependent with other variables. Hence, the societal context accounts for the form ethnicity takes at a particular time (cf. McKay, 1982, p. 413).

Historical and political variables which profoundly shaped, and continue to shape, ethnic relations between aboriginal and non-aboriginal Canadians have been discussed in the previous chapters. However, we have not dealt yet with the use of a distinct culture argument in political relationships between aboriginal and non-aboriginal Canadians. Ethnicity involves a dynamic rearrangement of relations and customs. In order to assess how cultural traditions are retained, borrowed, or developed for political purposes, we should study ethnic groups within the context of developing new situations (A. Cohen, 1974b, p. 97). The Canadian constitutional process on aboriginal matters provides such a new context in which to explore how cultural differences are developed in organizational functions for unity, boundary establishment, political mobilization, and action.

Because ideology as an organizational function of ethnic groups integrates all other functions, I will focus on this aspect (cf. A. Cohen, 1974b, p. 24). Ideology can be defined as a system of interacting symbols, extrinsic sources of information in terms of which human life can be patterned. It appeals subjectively to persons and is therefore a powerful mobilizing force (Eickelman, 1981, p. 86; Geertz, 1973, p. 193-233; Hornby, 1983, p. 421). Thus, the symbols embedded in ideology can be used as weapons in social conflict over resources, power, and prestige (Parker, 1988, p. 374). Ideology is partly implicit for it is based on unconscious, or subconscious, ideas that govern people's behaviour (ibidem, p. 380). Therefore, nobody consciously expresses ideology but it is reflected within people's behaviour, belief systems, and (public) statements.

As Aronson (1976) states, ideology may attract people (value

consensus base) or may distract them (value dissensus base). Where ethnicity is concerned, it comprises an ideology of and for value dissensus and disengagement within a certain political arena, in order to pursue interests not shared by others in that arena (ibidem, pp. 14-15). And further he states: 'An ethnic ideology says in effect that we do not agree on the ultimate values (or goals or ends) of the system, and we want to be left alone (perhaps with enough resources) to pursue "our" own ends (...). Applied to others it says we will treat you as if you are pursuing different values from those we have' (ibidem, p. 15).

The ideology that is used by aboriginal peoples in their political relationship with Canadian society at large may be referred to as an opposition ideology (cf. Lithman, 1984a, pp. 167-172). This is also reflected in the 'white versus Indian antagonism'. Only through disengagement, and through maintenance of their special legal status, do aboriginal peoples feel they may obtain equality within Canadian society. The opposition ideology comprises an aboriginal peoples' consciousness that is as much based on their own perceptions of themselves as on the perceptions held by non-aboriginal persons of them (cf. Lemaire, 1986, pp. 249-250, p. 267, pp. 283-294). The opposition ideology of aboriginal peoples is expressed in the political claims of national aboriginal organizations.

The relative power of national aboriginal organizations lies in their small number, representativity, in the opportunity given to them to express political claims, as well as in the authority given to aboriginal leaders to develop strategies for political unity and activism (5). Ever since the entrenchment of aboriginal rights in the Constitution Act of 1982, and the constitutional process on defining aboriginal rights, the opposition ideology operated by national aboriginal organizations is reflected in their concept of aboriginal self-government. Although there are different perceptions on aboriginal self-government between aboriginal organizations, we can pinpoint several aspects of the opposition ideology that holds for all aboriginal organizations.

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5) According to Kallen (1982, p. 190), people are drawn into a movement through emotional commitment to the leaders rather than ideological commitment to the cause. Many of them do not fully comprehend the political cause of the respective organizations for they are formulated within the framework of a political culture that often has its own rules of conduct, norms and values (cf. Bailey, 1977).

The traditional culture argument

Aboriginal self-government as an opposition ideology is intimately connected with the traditional culture argument. This argument must substantiate and legitimate the aboriginal peoples' opposition ideology. Traditional aboriginal culture is used as both means and end in the perpetual reconstitution of the structural relationship between aboriginal peoples and Canadian society at large. Aboriginal self-government is perceived as the only means of seeking equal participation within Canadian society. The appeal to cultural traditions requires change. Aboriginal self-government is not possible without restoration of aboriginal traditions. The culture argument is directly linked to political claims while at the same time being an expression of distinctiveness. As Weaver (1985a, p. 141) points out:

> 'To sum up, "aboriginal rights" is a complex, emotionally charged, multivalent symbol that represents native demands for recognition as a unique cultural group; that is, as aboriginal people. On the basis of this uniqueness, they demand special resources from the state'.

Political proposals with reference to aboriginal self-government are deliberately arranged around traditional aboriginal institutions and are ideologically integrated in mottos such as 'our customs are sacred', or 'aboriginal self-government is the only way to survive as a people'. In referring to traditional culture, aboriginal leaders are not propagating stagnation or conservatism or a return to the past. They aim to articulate the aboriginal peoples' new roles and positions within Canadian society under old symbols (cf. A. Cohen, 1974b, pp. 96-98).

Aboriginal leaders combine notions of special status and rights with a critique on the manner in which historically the Canadian government has denied their rights and put great emphasis on aboriginal traditions and values (Boldt, 1982, p. 484; Boldt & Long, 1984a, and 1984b, pp. 537-539; Little Bear et al., 1984, p. 3). Their demands are framed within the aboriginal self-government concept. In order to make their opposition ideology relevant within the context of constitutional negotiations on aboriginal rights, their formulation of self has undergone changes. Whereas previously the term 'native' was used, pointing primarily to socioeconomic rights,

the term 'aboriginal' is increasingly used since it refers to the whole complex of political rights. Furthermore, the term 'Indians' is replaced by 'First Nations'. 'Indians' is perceived of as a European fictitious term. 'Nationhood', however, may imply continuity with a pre-colonial cultural and political past. Last, the term 'First Nations' reflects the Indian people's political positions (6). Sometimes, aboriginal leaders use the term 'sovereignty' rather than 'aboriginal self-government' as a means to display their separateness and struggle for autonomy within the political constellation of Canadian society.

Aboriginal leaders use the appeal to cultural traditions in the constitutional process on aboriginal matters to evoke and to authorize radical innovation, which is a different but equal position of aboriginal peoples within Canadian society at large (cf. Scott, 1988, pp. 16-17). Rather than referring to traditions, Hobsbawm (1983, p. 1) refers in this respect to invented traditions. They are:

> 'A set of practices normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, where possible, they normally attempt to establish continuity with a suitable historic past'.

Hence, invented traditions are for the most part responses to new situations (7). I am not concerned with whether certain traditions appealed to in the opposition ideology are based on reality. What is important here is that the meanings embedded in the opposition ideology are used as organizational mechanisms for boundary establishment, unity, political mobilization and activism, and for legitimization of their political goals to themselves and to others.

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6) There is an increasing emphasis on national identity by Indian people. 'First Nations' or 'Indian nationhood' indicates that persons of Indian ancestry do have something in common despite their distinctive cultural background (cf Bonney, 1977)

7) For example, the Micmac perceive their Catholic faith as a fundamental aspect of their traditional Indian culture The Micmac were christianized by French missionaries as early as the 17th century Gradually, Catholicism has become a characteristic by which they identify themselves as a group

Traditional motherhood

A very important aspect of the traditional culture argument is reflected in the aboriginal peoples' conception of femaleness. Aboriginal informants consistently referred to femaleness in terms of motherhood, I will use the latter. Indian, Inuit and Metis (female as well as male) informants unanimously stated that aboriginal women played central roles and held according positions within their traditional cultures. Their argument, based on the traditional motherhood concept, reaffirms their opposition ideology since it is directly opposed towards their perceptions on women's roles within non-aboriginal cultures. It strengthens the belief that aboriginal cultures are connected and, at the same time, reaffirms non-aboriginal persons' notions that all aboriginal cultures are the same, as opposed to their own culture. This illustrates how the opposition ideology is as much based on perceptions held by non-aboriginal persons on aboriginal peoples.

According to A. Cohen (1974b, pp. 16-17), in nearly all societies roles and characteristics of femaleness are manipulated to develop gender into a potent symbol in the organization of interest groups. Motherhood, or femaleness, is used as a guardian of ethnic identity. The symbolism of femaleness also serves to foster group endogamy (cf. Parsons, 1975, pp. 65-66). Following the line of this argument, one can find another reason why women who married out were sometimes criticized and stigmatized. Women who lost status diminished the group's number. Men, on the other hand, could not endanger 'the Indian race' since they would not lose their legal status.

The following characteristics of the traditional motherhood argument reflect its use as an opposition ideology, shared by all aboriginal peoples. First, aboriginal men and women are by tradition equal, but have different roles in society. Secondly, women's primary concern is with their families, which is the fundament of traditional aboriginal cultures. Thirdly, they are traditionally responsible for transmitting the culture to younger generations. In doing so, they provide for cultural continuity. Fourthly, the colonization process and the inherent import of western notions of femaleness degraded aboriginal women. Therefore, asymmetrical relations between Indian men and women are the result of the imposition of Indian Act regulations and are not authentically Indian, or aboriginal (see enclosure 5.1, Art Solomon's 'The Woman's Part').

Traditional motherhood is a complex blend of beliefs and ideological representations regarding aboriginal femaleness. It explains how gender relationships are perceived by the participants in respective aboriginal cultures. However, since the term 'traditional' is stressed, it implies that contemporary gender relationships are not necessarily based on equality. The reason why traditional motherhood, and not another feature of aboriginal cultures, became such a significant aspect of the opposition ideology is manifold. First of all, aboriginal peoples' perceptions of traditional motherhood are universal and unanimously shared by males and females. Therefore, it has a strong unifying character. Furthermore, aboriginal peoples' perceptions of motherhood, according to themselves, are strongly in opposition with those held by non-aboriginal persons. Lastly, due to the impact of the women's movement, women's issues became popular issues of political debate.

We have been dealing with the meanings attached to femaleness in aboriginal cultures and the constitutional context in which the traditional motherhood argument is used as an expression of distinctiveness as well as an instrument for political struggle and social change. At the same time, the traditional motherhood concept becomes a crucial vehicle in the aboriginal women's struggle against both Canadian society at large and aboriginal society, to pursue sexual equality in all spheres of their lives. The discontinuity between aboriginal customary practices (sex discrimination), while at the same time using the traditional culture argument (sexual equality) to confirm political claims, provide aboriginal women with an opportunity to operationalize traditional motherhood as a strategy.

5.2 Issues confronting aboriginal women in their political struggle for aboriginal women's rights

In order to assess NWAC's strategy fully we have to take into consideration the political relationship between men and women in general, between aboriginal and non-aboriginal Canadians, as well as between aboriginal men and women. The argument is that aboriginal women, and particularly Indian women, because of a complex blend of sexism and racism have not only been discriminated against dually but also by both Canadian society at large and by aboriginal society (cf. Jamieson, 1981). Dual discrimination against Indian women resulted in a problematic political situation. In order to make their

claims of sexual equality relevant, they had to reckon with the dominant ideology as well as with the opposition ideology of aboriginal peoples. Furthermore, the fact that NWAC could not officially participate in the constitutional process on aboriginal matters obliged the integration of the sexual equality claim within that of aboriginal self-government.

Canadian society can be perceived as an exponent of western culture that, as a rule, is male dominated. The opportunities for women to hold offices of power have increased since the 1960s, since formal barriers have been taken away. However, informal barriers are still present, such as customary practices, implicit expectations with regard to femaleness, and rules referring to gender. Thus, women have gained the right to play an official (public) role in the political system and to hold other offices of power but the conditions under which they may enjoy their rights are still a constraining factor (Ortner & Whitehead, 1981, p. x). On the other hand, women's perceptions are a great deal constrained and conditioned by the dominant ideology within society. Therefore, dominant ideology analysis should precede that of women's ideology.

Ardener (1975) distinguishes 'models of women', the dominant ideology, from 'women's models', women's ideology. Models of women represent a set of ideas concerning women in the minds of those who generated the models. These models appear to dominate women's models, which represent concepts of women themselves. Women's models, therefore, may include models of women, may be muted or may be counterpart models to the dominant structuring models in society (Ardener, 1975, pp. viii-xx; cf. Silman, 1987, p. 82). Thus, aboriginal women, as women, in struggling to pursue their goals at the political decision-making level within the Canadian constitutional process, have to take into consideration the dominant models of women, that is, to express their goals in terms that are comprehensible to the participants in the dominant culture.

From the above, it is obvious that I have been merely dealing with factors referring to women's political participation on the level of official political decision making. The reason for doing so is because I restrict myself to NWAC as a national political body of aboriginal women and its strategies to pursue its goals within the constitutional process on aboriginal matters. Women, as much as men, are political actors within a particular culture. Women's goals, perspectives, and strategies do play a role within a political system even if they themselves are more or less physically absent from the

political arena (Collier, 1974; cf. Keefe, 1976; Ross, 1988)(8). However, as a result of men's and women's distinct roles within their respective cultures, women find other factors relevant and stress other features of culture than men to gain opportunities to develop themselves. This is what Ardener (1975) has been referring to as 'women's models'. Indian women provide a good example in this respect. Because of the sex-discriminatory regulations in the Indian Act and its consequences for Indian women, they do not share the same issues with Indian men. Furthermore, Indian women's self-awareness has also been stimulated by the women's movement in Canada since it acknowledged Indian women's legal discrimination.

In review of the content of the aboriginal peoples' opposition ideology used in their political relationship with Canadian society at large, there is enough reason to dichotomize between aboriginal and non-aboriginal Canadians, despite internal differences because of culture and gender background. Thus, aboriginal women, in being aboriginal persons, have to take into consideration models of women in dominant society as well as those within the opposition ideology of aboriginal peoples in order to make their political goals comprehensible to and legitimate in the eyes of both Canadian society at large and aboriginal society. Gender consciousness as well as aboriginal self-awareness were required for the Native Women's Association to establish and manifest itself, as well as to develop successful strategies (cf. Mitchell & Oakley, 1986).

We have seen that a significant aspect of the opposition ideology is that of traditional aboriginal motherhood. This is used as an expression of distinctiveness and as an instrument to pursue the primary political goal of aboriginal self-government. The aboriginal peoples' opposition ideology is as much affected by the dominant ideology which means that it encompasses models of women as well. This ambivalence is clearly shown in the discrepancy between the expression of aboriginal motherhood and the practice of sex discrimination against aboriginal women within their own communities. For example, it is still perceived unlikely for a woman to occupy a high political position in the AFN. Leaders of NWAC are being looked upon as less equal than their male counterparts in

8) Women, as much as men, want to maximize their interests and can prod men into action when factors favour the outcome that women desire (Collier, 1974, pp. 90-94).

the other national aboriginal organizations (9). Besides, it is still hard for Indian women to become chief on a reserve. One of my informants who had political ambitions on her reserve stated that she sometimes heard from men: 'Even though you're a woman, you'd make a fine chief'. Thereupon, she argued: 'I don't blame them for saying so because what they have been exposed to (western male chauvinism, L.K.) makes them say such a thing' (interview 13/1/86)(see Table 5.1). Both the male-dominated aboriginal organizations and NWAC try to overcome this contradiction by claiming that discriminatory practices are not the result of aboriginal cultural traditions but are the consequences of the imposition of colonial policies that reflect dominant models of women.

Table 5.1 Numbers of Indian bands in Canada and identified female chiefs, January 1984.

Province	Number of bands	Female chiefs	Percentage
Prince Edward Island	2	0	0 0
New Brunswick	15	1	6 7
Newfoundland	1	1	100 0
Nova Scotia	12	1	8 3
Quebec	35	0	0 0
Ontario	117	5	4 3
Manitoba	59	3	5 0
Saskatchewan	70	4	5 7
Alberta	46	0	0 0
British Columbia	194	22	11 3
Yukon	27	2	7 4
North West Territories	3	1	33 3
Nationally	581	40	6 9

Source NCC, 1984

9) Parker (1988, p 380) argues that unconscious meanings about gender affect people's behaviour towards the other sex

With respect to the political relationship between aboriginal men and women, NWAC had to legitimate its separate existence in such a way as not to jeopardize the aboriginal peoples' opposition ideology. As we have seen, NWAC's establishment is to a large part due to the development of the Indian Act and its implications for the sociopolitical and legal positions of Indian women. As a matter of fact, it created unity and sisterhood among Indian women, irrespective of their different cultural backgrounds and living circumstances (Lachapelle, 1982, pp. 257-260). Status Indian women, from their legal position, should have been able to express their views through the communication channels of the AFN (previously: National Indian Brotherhood). Non-status Indian women should have been able to express their views through the NCC. However, I have already pointed to the informal barriers that restrict women's participation in male-dominant structures, and particularly the NIB's reluctance to integrate women's distinct views into its political agenda (cf. Maroney, 1986, p. 108). As concerns non-status Indian women, they could not participate in political decision making, either on the Indian band level or on the level of national Indian politics (NIB or AFN)(10). Thus, it appeared to be an absolute necessity for non-status and status Indian women alike to have their own national political body to express their griefs and goals. Indian sexual segregation on the political level appeared to be the only possibility for Indian women to develop political strength (cf. Keefe, 1976, p. 232).

During the 1970s, the political relationship between NWAC and the NIB did not run smoothly. Indian women who were politically active were often accused of being 'a bunch of women's libbers who fight for their own, individual, rights' (11). The problems NWAC experienced with its male counterpart were mainly the result of its dominant Indian constituency and according griefs and goals. Inuit

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10) According to several female aboriginal informants, 80% of NCC's constituency is female, but only some 20% of the political positions are occupied by women. With respect to the AFN, officially 50% of the constituency is female, but only 10% of the leadership positions are held by women. Within the MNC, 30% of the high positions are held by Metis women. Only within the ITC there is an entirely different picture. Women are found in the highest positions, even with respect to presidency.

11) The equation between women organizing, such as was the case with NWAC, and feminism has been implicitly adopted since the late 1960s. Feminism is used as a blanket to cover all women's activities (Delmar, 1986, p. 11). Furthermore, the term is often used in a derogatory sense.

women's two-sidedness, being female and being aboriginal, has never created problems in their political relationship with Inuit men and their integration in the ITC (12). Inuit women's griefs and goals, such as within the realm of economic development, education, and social welfare, are primarily community issues. Indian women's issues, that are dominated by the consequences of the sex-discriminatory regulations in the Indian Act, are not so much community issues at the same time. Non-status Indian women, in seeking restoration of their Indian rights (including their right to reside with their families on the reserve), have to explain how the fostering of their rights will be for the benefit of the entire Indian community. Thus, they have to make their political demands relevant.

In order to smooth the political relationship between Indian men and women, and in view of the limited constitutional avenues available for mainly Indian women to seek their goals and rights, there was no alternative for NWAC than to establish boundaries between the association and the women's movement, and to pursue its goals within the framework of the aboriginal peoples' opposition ideology and political claim of aboriginal self-government. It is for this reason that NWAC's motto changed from 'Indian rights for Indian women' to 'sexual equality is an aboriginal right'.

To disassociate themselves from the women's movement, NWAC took a stereotypical view of feminism. Feminism was perceived as a predominantly white middle-class women's movement. Indeed, the term 'feminism', because of its connotations for feminists and non-feminists, has become an obstacle in the understanding of feminism in its diversity and specificity. It is a misconception to argue that the Canadian women's movement shares the same concept of womanhood and that there is a consensus on the prime goals that should be achieved (cf. Delmar, 1986, p. 8, p. 25). Although influenced by 'feminists', and needing their support, the aboriginal women's movement is different. White middle-class women's oppression differs in kind and degree from that of Indian women. Whereas non-aboriginal women seek equality of opportunity, Indian women are still seeking legal establishment of their equality with aboriginal men. Furthermore, there are differences of opinion on topics such as abortion and birth control. Within the frame of

12) However, several Inuit informants reported that white male attitudes towards women have affected the relationships between Inuit males and females, but this was far more restricted than was the case with the Indians because an Indian Act system did not exist.

traditional aboriginal motherhood, it is inconceivable that women would not let their children be born (cf. Jamieson, 1981; Keefe, 1976, pp. 219-220; Lachapelle, 1982, pp. 261-262). According to McMullen (1981), the fate of white women cannot be compared to aboriginal and ethnic women in Canada. Ethnic heritage can be a source of pride and a catalyst in the quest for women's identities.

Another problem that NWAC was confronted with in its struggle for sexual equality rights was seeking the support from Inuit and Metis women and solving the internal differences among its constituency. It had to formulate its political goals in such a way as to bring unity. This task became the primary responsibility of NWAC leaders who operated out of the national office in Ottawa. There are Indian women who oppose Indian women who are politically active, either on the band level or on the national political level, because they perceive this as contravening their respective Indian traditions. In most Indian communities, chieftainship (if institutionalized) was a male occupation (13). The association argued that since male aboriginal leaders did not operate anymore as traditional leaders, reflecting both men's and women's interests, women were compelled to seek leadership positions themselves.

NWAC leaders upheld the position that Indian women by tradition are responsible towards their families and communities. In order to be adequately in charge of the needs of their families and communities, women needed to be by themselves in a separate organization. Besides, within traditional Indian cultures separate women's societies had always existed. The above can also be illustrated by a statement from the president of NWAC:

> 'In fact, all subject areas have a direct affect on us, as they do on all segments of aboriginal society. However, there are some issues which are of more particular interest to us because of our special role in aboriginal society and the direct influence those issues have on native women' (NWAC Newsletter, 1, 8, 1983, p. 2)

Another problem is that there are Indian women who participate as much in the sex-discriminatory system on reserves as men do and they oppose Indian women who fight for restoration of their rights.

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13) However these women at the same time hold the opinion that Indian women are the true leaders since they give birth to chiefs

NWAC leaders argued that having women in high positions within male-dominated aboriginal organizations did not guarantee that there was no male bias.

The traditional Indian motherhood concept appeared to be a concept that legitimated NWAC's existence and separate mandate, and at the same time reconciled the different views of its constituency. Since other aboriginal peoples were in agreement with the traditional motherhood concept, NWAC was assured of the support of Inuit and Metis women as well.

Because NWAC had to legitimate its existence and political mandate towards Canadian society at large, aboriginal communities, male dominated aboriginal organizations as well as towards its own constituency, the communication network that provides the framework in which NWAC operated was necessarily much broader than those of AFN, NCC, MNC and ITC (see Figure 5.1).

Ever since NWAC established a national office, the president of NWAC has been the public face of the organization. Her influence and power have increased since her statements and actions are decisive in creating satisfactory political relationships between aboriginal men and women, in bringing unity among NWAC's constituency and in fostering political activity. In this sense, the president of the Native Women's Association of Canada is the most important person in expressing the ideology of traditional Indian motherhood as fundament of the association's strategies in order to seek its political goals within the constitutional process on aboriginal matters.

5.3 Traditional motherhood in defence of sexual equality rights for aboriginal women

As already mentioned, NWAC is fundamentally an Indian women's organization although it is recognized as a national organization, representing the goals of all aboriginal women in Canada. Indian women's political goals are intimately connected with the status regulations in the Indian Act and the consequences for women both within their own Indian communities and within Canadian society at large. Therefore, Indian women focused on constitutional guarantees of their equality with Indian men within future Indian self-government, as well as on the restoration of Indian rights for those who have lost them or who had never had them. In view of

Figure 5.1 Communication networks of national aboriginal organizations

AFN * ** 1 International indigenous peoples' organizations (WCIP)

2 Non-aboriginal support groups (CASNP)

3 Other national aboriginal organizations

4 Media

5 Grass-roots support

6. DIAND officers and other government officials dealing with aboriginal affairs

7 Prime Ministers, including federal and provincial governments

Additionally required communication networks for NWAC

NWAC 8 Female politicians

9 Agencies created for women (CACSW)

10 Women holding high political offices in male dominated aboriginal organizations

11 Women's movement

12 International aboriginal and non-aboriginal women's organizations

13 Non-Indian women married to status Indian men

* Ideology limits the expansion of communication networks

** 1 to 13 may be connected to one another in multiplex relations (cf Boissevain, 1974)

NWAC's political mandate regarding both legislative (Indian Act) and constitutional changes, it is no wonder that it sought a close political working relationship with the male-dominated national Indian organization, AFN, rather than with either the NCC, MNC or ITC.

This section deals with how and why the traditional Indian

motherhood concept, which I consider an ideological concept, was launched by NWAC as a main strategy in order to pursue its goals within the constitutional process on aboriginal matters (14). 'Strategy' is originally a military term referring to the art of planning operations in war (Hornby, 1983, p. 854). Nowadays, it is also used within a political context signifying a complex of goals, plans, mobilization and actions, as well as legitimization of political goals (ideology) and activism. Indian women and their national body used opportunities available to them through the significance of the traditional motherhood concept which is embedded in the aboriginal peoples' oppositional ideology. By assessing the functional mechanisms of traditional Indian motherhood as used by NWAC, we are able to understand how this concept can be operationalized as a strategy. This strategy was reflected in NWAC's behaviour towards AFN, as well as in the association's political positions and statements (see enclosure 5.2, NWAC's Declaration of Principles and Beliefs, 1980). In the next chapter, we will deal with NWAC's strategy in action.

Boundary establishment

The traditional motherhood concept can be referred to as the aboriginal peoples' expression of their distinct identity vis-a-vis larger society. The federal government, in representing Canadian society at large, is perceived by many Indians as being solely responsible for today's sexual inequality of Indian women within their communities. The AFN was aware that this was an overestimated assumption, but nevertheless used this as a political argument (15).

NWAC was aware that the federal government was planning to revise the Indian Act in order to abolish sex discrimination and to restore Indian rights to those who had lost them or who had never had them. It was also no secret that the federal and provincial governments were willing to entrench explicit sexual equality guarantees for aboriginal women within the Constitution Act, if so required. Hence, the Native Women's Association had to direct its

14) Ideology does not necessarily entail a false, or distorted view of reality.

15) Lithman (1984b, p. 144) argues that equality pertains to certain aspects of Indian community life but not to others. Yet it is still a prominent feature of local Indian ideology.

strategies toward the AFN in order to pursue its goals, particularly with respect to positions of women within future Indian self-government. The association stressed the importance of the rehabilitation of traditional Indian motherhood for the development of future self-government. Without restoration of Indian women's traditional positions, true Indian self-government would not be possible. The ideological concept of traditional motherhood (sexual equality) fits into the Indian self-government concept.

Although this sounds like a contradiction, integration of women's issues into the mandates of male-dominated groups makes women's issues be taken more seriously. Ardener (1975, pp. viii-xx) argues that women are at a disadvantage when they want to address politically issues of particular concern to them since the public discourse, as a rule, is male dominated. In this light we can understand a female Indian informant's claim that she would rather be vice-president of the AFN than president of NWAC (interview 10/3/86). It implies that there was no alternative left for Indian women, given their marginal position within the constitutional process on aboriginal matters, than to seek integration of their political goals with those of the male-dominated AFN. On the other hand, the AFN realized that political conflicts between Indian men and women, as was the case during the 1970s, would not lead to the fulfillment of the political goal of self-government, that all Indian persons agreed upon. Hence, the traditional motherhood concept served an integrative function. At the same time, it served to maintain ethnic boundaries as underlined within the aboriginal peoples' opposition ideology, while changing internal relations.

In section 5.1 I have already stated why the traditional motherhood concept became significant. Not all traditions have been considered for rehabilitation. No Indian nation in Canada that traditionally knew polygamy would argue that this institution should be re-established in self-government. The National Committee on IRIW argued that with respect to sexual equality rights for Indian women:

> 'In any case the appeal to tradition is irrelevant. If it had been part of our tradition to castrate first born males, this would not make it right or just to practise now. There is always room for improvement' (IRIW, 1980, p. 5).

Duclos (1990, 377-380) argues that even if in some Indian cultures

patriarchy was a tradition, the question is whether Indian people want it to survive while larger society is increasingly influenced by feminist principles.

As the Assembly of First Nations did, NWAC blamed larger society for women's degraded positions (16). As was stated in NWAC's Newsletter (1983, 1, 8, p. 2): 'Equality has always been a tenet of our cultures, but that like many other of our traditions has been cast aside by colonial powers'. Nevertheless, several female informants expressed to me the awareness that many Indian persons had to be re-educated to recognize Indian women's important traditional roles and the necessity to rehabilitate women's rights (cf. Holmes, 1987, p. 38). Indian women themselves have to learn what they are traditionally responsible for and to take control again of their families and communities. As an informant explained: 'Sexual equality in law will help women to resume their traditional roles and to exercise the power that comes with them naturally' (interview 3/4/86).

Unity, mobilization, and activism

Despite different political priorities, there is unity between Indian men and women in their struggle for self-government. The traditional motherhood concept supports that of self-government. In order to articulate the connection between the two concepts, NWAC adopted AFN's political terminology, portrayed itself as 'a Voice of Many Nations', and defined sexual equality is an aboriginal right. Furthermore, despite differences between Indian, Metis, and Inuit women, the latter two supported the Indian women's plea for an Indian Act revision as well as for a sexual equality guarantee within the Constitution Act. The ideological concept is also instrumental in bridging conflicts of opinion among NWAC's constituency as to how Indian women's goals should be reached. It mobilizes NWAC's constituency by fostering emotional commitment to the political plea. As all female informants agreed, the traditional Indian motherhood concept was a belief system taught to them by the elders. It was an Indian perspective and not a mobilizing myth. Thus, implicitly informants themselves referred to the usefulness of such an

16) See also the quotation from Aggamaway (1983) in this chapter.

ideological concept for mobilization of the grass roots and for political activism.

The traditional motherhood ideology put a strong lever in the hands of NWAC to obtain AFN's future cooperation to end sex discrimination against Indian women. On the one hand, traditional motherhood within the framework of Indian self-government called for immediate legal changes. On the other hand, it required the AFN to 'practise what they preach'. If Indian men and women agree upon the restoration of Indian women's traditional roles, and according positions within self-government, then men have to work as hard as women to accomplish this political goal.

Legitimization of political goals

Another political goal of the Native Women's Association with respect to the constitutional process on aboriginal matters was an Indian Act revision, particularly concerning the restoration of Indian rights. Reinstatement of non-status Indian women and children was necessary in order to prevent perpetuation of sex discrimination and to give Indian women the opportunity to perform their traditional tasks within an Indian cultural environment. Before Indian self-government became institutionalized, all persons of Indian ancestry, mostly women, who had lost or who had never had Indian status should be reinstated. This was required in order to 'start off right'.

NWAC had to legitimize its goals towards Canadian society at large, towards the women's movement, towards other national aboriginal organizations, and to its own constituency. Due to the impact of the women's movement, and due to legal obligations, the federal and provincial governments were compelled to seek sexual equality guarantees for aboriginal women. Hence, it was the women's movement in Canada that legitimized largely NWAC's political goals. In order to legitimize its goals toward male-dominated aboriginal organizations, NWAC had to become disassociated from the women's movement, although it still needed non-aboriginal women's support. The fact that Indian women are dually discriminated against, resulting in different circumstances for aboriginal and non-aboriginal women, legitimized NWAC's distinct political aspirations and integration within the aboriginal peoples' movement.

The traditional motherhood concept, in referring to cultural

traditions, and therefore to collective rights, made NWAC's political goals relevant to the aboriginal peoples' claim to self-government, also referred to as a cultural, collective right. Hence, according to NWAC sexual equality is not an individual right but a collective, aboriginal right. Legitimization of NWAC's political goals from the perspectives of particularly the AFN was absolutely necessary. Indian women wanted to put an end to sex discrimination in all spheres of their lives and they needed the support (whether willingly or not) of the AFN.

NWAC's distinctiveness and separate actions were rationalized by reference to traditions which honoured female leadership in certain areas (cf. Fiske, 1987, p. 186). Besides, the appeal to traditions also reflected Indian women's self-awareness and a search for their identity within future Indian self-government. Thus, NWAC used the traditional motherhood concept as a strategy, as both a fundament of and justification for its political aspirations within the constitutional process on aboriginal matters. Using this ideological concept of traditional motherhood was necessary in order to seek the cooperation and support of the AFN for NWAC's political plea since it could not play an official role in the constitutional process on aboriginal matters (17). The AFN leaders had to be made aware that their opposition ideology, as framed within their political claims, was not in accordance with the way they related to NWAC and Indian women. This was to be done in such a way as to mask internal conflicts between Indian men and women from the outside world. Whenever NWAC brought out in the open the fact that women were discriminated against by their own men, non-aboriginal support groups would disassociate themselves from the AFN. Furthermore, the federal government could use the fact that Indian men discriminated against their women to legitimize its interference in other Indian affairs. The fact remains that Indian women were afraid that Indian communities themselves would not rehabilitate them. Therefore, they wanted constitutional guarantees of sexual equality. By referring to the traditional motherhood concept, NWAC tried to hide the fact that Indian women had problems with their own men.

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17) When NWAC realized that it could not obtain a seat at the First Ministers' Conferences pertaining to the constitutional rights of aboriginal peoples it excused the AFN for preventing this by claiming that it did not matter which organization represented the political aspirations of Indian women 'as long as the message gets through' Again, an appeal to cultural traditions was made by stating that traditional leaders were the mouthpiece of both women's and men's viewpoints.

Enclosure 5.1

THE WOMAN'S PART

The woman's part in the Mohawk tradition
encompassed all of life, political, economic, social,
from birth to death, and growing food
and governing the people.
In their tradition the line of descent
was through the women.
It was the women primarily who choose
the chiefs or had them removed from office
if they did not serve the people.
It was that way because from birth
to manhood no one could know
more intimately what kind of person he was,
what qualities of heart and mind.
But the men also had their part
in the choice because they saw and
understood as men.
In the Ojibway tradition the line of descent
was through the men
but the woman owned the food and the shelter
and all but the personal possessions of her man
and in all of the nations and tribes
it was known and understood
that the woman was "the centre of everything"
The children represented the future
but the women were the present and the future
because without them there could be no
future for the nations, the cycles of life
could have no continuity;
the Creator's plan for human beings
would end.

In each family the woman
was "the centre of the wheel of life"

The women "were of the earth"
they were connected to the earth mother
and to the grandmother moon
whose work was to govern when all things
were to be born
plants, animals, humans,
fertility was her working element.
Hence "the woman's cycle" or her "moon"
The power of birth was given to the woman.
It was given by the Creator
and it is an immutable law.
It was given as a sacred work
and because it is a sacred work
then a sacred way was given to the women
The woman stands between man and God.
She takes from both and she gives to both.
That is the place made for her
by the Creator
It is a place of highest honour
and the reason why men should honour
women.

But equally, women must honour men
if not, then everything is out of balance
and we can have nothing but chaos and pain
These are the first elements that must be
put back together
or nothing, but nothing
can come right again

The woman is the first teacher
Her teaching begins when the child is in
the womb and only begins to diminish
as the father and grandparents and others become the
additional teachers.

The woman is the foundation on which
nations are built.
She is the heart of her nation.
If that heart is weak the people are weak
If her heart is strong and her mind is clear
then the nation is strong and knows its purpose
The woman is the centre of everything.

The Cheyenne people have a saying that,
no matter how strong our warriors
or how good their weapons,
if our women's hearts are on the ground
then it is finished.

It is there at that point where
the line of life was broken,
the instructions for the purpose and the meaning
of life were cut off,
and the little girls were no longer taught
by their mothers about the meaning
of a woman.
What God had in mind when he created women.

And it is that search that women must
begin and we must help them to get it
back together.
That is the absolute "first step"
the answers are in the spiritual
because it is a spiritual question.

Art Solomon
Objibwa Elder

Enclosure 5 2

native women's association of canada

A VOICE OF MANY NATIONS

PREAMBLE

We, the aboriginal women of this land, are making representation to the Government of Canada to declare the sovereignty of our peoples and to serve notice that we intend to relate to Confederation as equal partners with the Federal and Provincial Orders of Government.

As women we speak for ourselves, our children and the generations yet unborn, and join with the aboriginal peoples of this land in unity to declare that our rights, our nations and our sovereignty are ours to proclaim and ours to exercise.

We want you to convey to the Governments of Canada our willingness to negotiate and participate in such a partnership.

NATIVE WOMEN'S ASSOCIATION OF CANADA

DECLARATION OF PRINCIPLES AND BELIEFS

We believe that it is the fundamental right of every person of aboriginal descent to be recognized as such

We believe that the aboriginal people hold a special relationship with the British Crown that cannot be extinguished by any Canadian government

We believe that the aboriginal people of this land belong to sovereign nations that have the right of self-determination

We believe that the aboriginal rights, set out in the treaties, agreements and conventions and as based on our historical claim to this land, must be recognized

We believe that the government of Canada must recognize that the aboriginal people have the right to determine their own form of government

We believe that it is the right of the aboriginal people to determine their own citizenship, and that it is the right of all people of aboriginal descent who so wish to be recognized as such

We believe that it is the right of the aboriginal people to retain the uniqueness and vitality of their cultures, customs, languages and heritages

We believe that no act of the governments of Canada may abrogate, expropriate or extinguish aboriginal rights, including treaty rights

We believe that the aboriginal people have the right to negotiate as sovereign nations with the governments of Canada to change, alter or amend aboriginal rights through treaties or agreements

We believe that it is the fundamental right of Native women to have access and participation in any decision-making process, and full protection of the law without discrimination based on sex or marital status

We believe that the rights of our children must be protected

We believe that Native women and children must have equal access to all social, economic, health and educational opportunities

We believe that the rights of aboriginal people must extend to all people of aboriginal descent no matter where they live

We believe that our future lies as sovereign nations with our rights as women protected We desire to live under a government of our own making

We believe that the Constitution of Canada and not the Charter of Rights must state that the aboriginal people belong to sovereign nations and that the Government of Canada will honour our sovereignty

We believe that the Charter of Rights must provide protection for all women

December 1980

6 THE CONSTITUTIONAL PROCESS ON ABORIGINAL MATTERS: NWAC'S STRATEGY IN ACTION

> 'Maybe we didn't have all the same ideas but we all had one goal in mind: equality for the women (...). I think what really kept us going is our determination to seek what is rightfully ours. And that *is* our heritage. We all knew that no government agency - be it white or be it Indian - was going to tell us we were no longer Indian, when we know we are Indian (...). We were fighting for our birthright' (Tobique woman, cited in: Silman, 1987, p. 9).

> 'There is an obvious contradiction in attempting to negotiate rights that predate the very existence of the Canadian government if the only base for recognition is a registration system created by that government. It is therefore essential that all aboriginal people, whether or not they possess a government number, realize the potential consequences of endorsing the status quo' (NWAC, 1984, p. 15).

The proceedings of the First Ministers' Conferences in 1983, 1984 and 1985 reveal NWAC's strategy in action, a strategy that was explored from an analytical perspective in the preceding chapter. Therefore, the focus in this chapter is on how NWAC's traditional motherhood concept shaped its political power play, lobbying activities, and the forming of coalitions, as well as the result of the constitutional process for aboriginal women who sought constitutional sexual equality guarantees.

The first section describes the proceedings of the first First Ministers' Conference in 1983. At that time, there was still animosity between NWAC and AFN. The second section, dealing with the 1984 First Ministers' Conference and its aftermath, describes how sexual equality became a hot constitutional issue. Furthermore, the beginning of a working relationship between NWAC and AFN is described. Their joint efforts to uphold an Indian Act amendment (Bill C-47) proved to be successful. The last section deals with the 1985 First Ministers' Conference.

Although the fourth and last conference was held in 1987, and therefore is part of the constitutional process on aboriginal matters, it will not be discussed here. At that conference, aboriginal self-government appeared to dominate the entire agenda. The Indian Act

amendment of June 1985 (Bill C-31), providing for sexual equality, reinstatement of non-status persons and Indian limited self-government mechanisms, made that in 1987 sexual equality was not a constitutional agenda item anymore. This bill will be a topic in the chapters to be followed.

6.1 NWAC, the 1983 First Ministers' Conference and the Constitutional Accord: 'Still ain't satisfied'

In June 1982, a few months after repatriation of the Canadian Constitution, the constitutional process on aboriginal matters began. Officials of both the federal and provincial governments, together with representatives of aboriginal organizations, held preparatory meetings to discuss the constitutional agenda for the first First Ministers' Conference to be held in 1983. While ICNI and NCC immediately participated in those meetings, the AFN did not start negotiations before February 1983 (Dalon, 1985, pp. 86-87)(1).

The first meeting was held by deputy ministers, responsible for aboriginal affairs, together with representatives of both national and provincial aboriginal organizations. This meeting was followed by several ministerial meetings. At those meetings, the Ministers of Justice and DIAND together with aboriginal representatives set up the agenda for the 1983 First Ministers' Conference (2). Preparatory meetings to First Ministers' Conferences were held two to three times a year during the entire constitutional process on aboriginal matters, from 1982 until 1987.

Although all preparatory meetings took place behind closed doors and were not covered by the media, they were actually the most important ones. First of all, the Native Women's Association, particularly through its provincial and territorial member associations, was able to participate in those meetings. Furthermore, any issue of

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1) AFN's delayed participation was due to internal differences. Particularly Indians from the western provinces did not accept provincial governments' participation in aboriginal constitutional matters and were afraid that AFN's participation in that process might jeopardize their bilateral relationship with the federal government, as set out in the treaties (cf. CFN). However, the AFN gave in since it was felt there was no alternative but to register protests through the coming First Ministers' Conferences (Hall, 1983, p. 3).

2) The MNC was invited to participate in the constitutional process only less than a week before the first conference was held. Therefore, the organization had no decision-making voice on the constitutional agenda of 1983.

concern that was not on the constitutional agenda could not be discussed during the First Ministers' Conference. Therefore, it was of crucial importance to NWAC to have an impact on the setting up of the constitutional agenda at the preparatory stage of First Ministers' Conferences.

The federal government denied NWAC an official seat at all First Ministers' Conferences on Aboriginal Constitutional Matters since it considered the organization not representative, given the fact that it only represented the female part of the aboriginal population. Furthermore, it intended to tie NWAC to political negotiations on a future Indian Act amendment rather than to constitutional amendments. Nevertheless, Ottawa was well aware that the Indian Act was intimately connected with sexual equality and aboriginal rights in the Constitution Act. Besides, the Canadian Charter dictated a future Indian Act amendment to abolish sex discrimination. Furthermore, since it already appeared at an early stage of constitutional negotiations that aboriginal self-government would become the most significant subject of constitutional amendment requirements, it was felt necessary to establish principles within aboriginal self-government that guaranteed sexual equality for aboriginal males and females. Otherwise, sex discrimination against Indian women might be perpetuated. It was for this reason that the federal government provided separate constitutional funds to the four participating aboriginal organizations (MNC, AFN, NCC and ICNI) in order to study sexual equality matters in relation to aboriginal rights.

The AFN also opposed NWAC's participation in the First Ministers' Conferences. It was of the opinion that NWAC had only a selective mandate and therefore did not deal with all aspects of aboriginal rights. Furthermore, AFN considered the issue of sexual equality as a matter that was closed and sufficiently provided for in various sections of the Constitution Act. Also, AFN stated that NWAC's leaders had a questionable reputation. It accused the leaders of being non-status women who were only fighting for their own benefits. The Native Women's Association, on its part, accused the AFN leadership of being status males who were mostly married to white women, and who were afraid that an Indian Act amendment might take away the Indian rights of their spouses. Nevertheless, in order to receive the separate funds as regards sexual equality and aboriginal women's rights in the Constitution, AFN had sexual equality on its agenda as an item to be studied by its constitutional

working group. However, the issue was never discussed before May 1984.

In 1982 and 1983, the Native Women's Association had tried to obtain an official seat at the First Ministers' Conference but without success. In view of the uncertainties in the Constitution Act, due to the confusion between individual (sexual equality) and collective (aboriginal) rights, and because of prevailing male chauvinist attitudes on the part of both band administrators and the AFN, NWAC insisted that it had to make sure for itself that sexual equality rights with respect to aboriginal rights would be unambiguous and clear. NWAC wanted its constituency to be able to participate in future Indian, self-governing institutions on an equity basis. For that reason, the association was working with the federal government through the Sub-committee on Indian Women and the Indian Act as well as through the Special Committee on Indian Self-Government. The first Committee had released its report in September 1982 and NWAC hoped that the federal government would accept the recommendations regarding sexual equality for Indian women and restoration of Indian rights for those who had lost them. Besides, as long as aboriginal self-government was not established as a constitutional right the Indian Act would remain intact. Therefore, next to securing sexual equality within future Indian self-government, it was of vital importance to seek equality within the Indian Act system.

The Special Committee on Indian Self-Government did not release its report before October 1983, but it was obvious from the beginning that the committee recognized Indian jurisdiction over band membership as a valid principle (HoC, 1983). NWAC considered restoration of the birthright of particularly non-status Indian women a prerequisite in order to allow them equal participation in future Indian self-governing institutions. The Alberta group Indian Rights for Indian Women, that was heard by the Sub-committee on Indian Women and the Indian Act in 1982, made the problem for women quite clear: 'Decisions of who comes back to the reserve and who receives band membership should not be left with band councils but settled by legislation because most band councils are male chauvinist, have unfounded fears regarding the return of reinstated women, set up wrong membership codes and ignore women's issues' ('The Native People', 19/11/1982). Thus, before any constitutional rights of the aboriginal peoples were discussed there had to be a guarantee that they were subordinated to the principle of sexual equality. Sex-

discriminatory status regulations in the Indian Act resulted in an extremely complex connection between the issues of legal status, Indian band membership and self-government. As Holmes (1987, p. 38) quotes several Indian informants: 'We can't speak of self-government and self-determination as long as Indian women and children are not accepted as Indians; because then, we would be speaking of autonomy only for Indian men, not for Indians'.

When the preparatory constitutional meetings began, NWAC lobbied both the federal and provincial governments, as well as with the Assembly of First Nations. This was primarily done by the National Committee on Aboriginal Rights (NCAR). The Committee comprised five appointed women who were either part of the Executive or the Board of Directors. All women were politically experienced and had been able to set up networks that included personal relationships with leaders of particularly the AFN (interviews 23/11/85 and 15/4/86). The NCAR was mandated to work on both the Indian Act and the Constitution Act, and to lobby the governments and other aboriginal organizations. The committee did not work under the spotlight of the media and therefore not much is known of the specific activities it undertook. As a matter of fact, members of the NCAR preferred to keep their political activities 'private', that is, within the information network of NWAC itself. However, it is known that the NCAR and several members of the PTMA's were present at the preparatory constitutional meetings. Furthermore, the NCAR was able to obtain a seat at the Board of Directors of the NCC through which it was able to have a voice at the 1983 First Ministers' Conference. The committee's work was of crucial importance during the entire constitutional process on aboriginal matters. Despite the fact that NWAC was not able to obtain a separate seat at the First Ministers' Conference, the NCAR addressed the federal government by writing position papers, by correspondence with the Prime Minister, the Minister of Justice and the Minister of DIAND. This way, NWAC tried to have an impact on the constitutional decision-making process regarding aboriginal rights and sexual equality.

The NCAR proved to be successful in having sexual equality rights of aboriginal women recognized as a constitutional issue and as an agenda item of the First Ministers' Conference. In contrast to the AFN, the NCC and the ICNI supported NWAC's political struggle to get sexual equality on the aboriginal constitutional agenda. Although statements in the direction of the traditional

motherhood concept were continually made by NWAC, support from the NCC and ICNI cannot be attributed hereto entirely. The Inuit perceived sexual equality guarantees with respect to aboriginal rights as self-evident. For the NCC, sexual equality guarantees were instrumental to legal recognition of self-identifying aboriginal persons (particularly Pan Metis). On the other hand, the federal and provincial governments were willing to discuss sexual equality as a consequence of constitutional as well as international legal obligations. Furthermore, given the strong lobbying force of feminist groups in Canada which did not allow any form of sex discrimination, political leaders could not afford losing their voting potential.

Whereas previously sexual equality was merely perceived as a social issue to be discussed on other political forums, now it was given the same constitutional status as aboriginal rights. Originally, the agenda for the first First Ministers' Conference held six items, but at the last ministerial meeting it was decided that aboriginal self-government and sexual equality would be the only issues to be discussed (3).

The first First Ministers' Conference took place on March 15 and 16, 1983, at the Ottawa Conference Centre. At the conference there were 35 official seats through which participants were able to negotiate. Three seats were reserved for the federal government, that is, the Ministers of Justice and DIAND and the Prime Minister, who was also chairperson. The Territories and provinces each had two seats. The four aboriginal organizations each had two seats as well. The number of seats and the division among the parties was fixed, but a seat could be offered to another party. This way, NWAC was able to speak at the conference through the seat of the NCC (4).

To all participants the conference was considered significant, and there were several reasons that obliged the outcome to be a success for all parties involved. Furthermore, the media coverage was heavy. Political careers as well as the future of aboriginal peoples would be determined moment by moment according to the persuasiveness of the images created, especially on television (cf. Hawkes, 1985, p. 6).

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3) The other four issues were health and social services; culture, language and education, land and resources, and economic development and fiscal arrangements As a matter of fact, self-government includes all aspects mentioned above, and is an integrative concept

4) Actually present were some 250 300 persons, including government advisors, other representatives of aboriginal organizations, and the media.

For this reason, Hall (1983, p. 3) argues that the conference was also a media contest. All participants were aware of the impact of the public opinion. Nevertheless, the legislative part of the conference, where constitutional amendments were discussed, took place in back rooms and behind closed doors (cf. FMC, 1983).

On the first day of the conference, aboriginal self-government was discussed but no consensus could be reached. The provincial governments - and particularly those of British Columbia, Alberta, Saskatchewan, and Newfoundland - were not interested in constitutional entrenchment of the right to self-government since they considered the term to be too vague. Most provinces insisted that self-government should be explored first in operational terms. All aboriginal peoples, however, had explained what self-government meant to them. It appeared that the provinces were concerned with financial details that were not worked out yet (cf. National Library of Canada, 1985, pp. 12-15).

The sexual equality issue was discussed on the second day, and it was here that a heated debate began. Whereas the president of NWAC spoke through the seat of NCC, NWAC representatives from Manitoba, Ontario, New Brunswick, Saskatchewan, and Quebec spoke through the provincial governments' seats. The PTMAs were considered to belong to the delegations of the respective provincial governments ('DOTC News', 31/3/83; ONWA, 1983, p. 17; Silman, 1987, pp. 190-212). Aboriginal women's groups from New Brunswick and Quebec, which were not affiliated with NWAC, were also present as delegates of provincial governments.

All aboriginal women that were present criticized the fact that they were only given a seat in order exclusively to discuss the sexual equality issue, and that they were only able to either observe or participate in the conference through somebody else's delegation. Aboriginal women argued that male views on aboriginal self-government were dominant and that women should be allowed to speak on other aboriginal issues that concern aboriginal communities. NWAC's president stated that any amendment to section 35 (aboriginal rights) should be subject to the equality clause. The birthright of aboriginal women, referring to reinstatement of non-status Indian women, should be constitutionally guaranteed. In referring specifically to the traditional motherhood concept, NWAC's president stated further that sexual equality is an Indian self-government issue, and that true Indian traditional governments would

have no problem with sexual equality (5).

The aboriginal women present at the conference were aware that they were merely being used by both the federal and provincial governments for their own purpose. As an informant stated: 'The government doesn't have to give us (women, LK) anything because it's totally in control' (interview 14/2/86)(6). Particularly the federal politicians wanted to look good to the public in view of future elections. The feminist movement had a significant impact and since sexual equality for aboriginal women was politically considered a hot issue, the federal government was prepared to support aboriginal women. Therefore, Minister Munro of DIAND reported to the participants in the conference that preparations were being made on an Indian Act amendment. Within the Constitution Act it was stipulated that status Indians remained a federal (financial) responsibility, whereas non-status Indians resorted under the provincial governments. Thus, reinstatement of non-status Indians through an Indian Act amendment was quite profitable for the provincial governments (cf. Dalon, 1985, p. 96; Hall, 1983, p. 4).

Despite the fact that NWAC knew it was used for other purposes, the association took the opportunities provided since it could not, as a separate group, obtain an official seat. All aboriginal women who spoke at the conference, whether or not as NWAC representatives, argued that sexual equality should be perceived as part of aboriginal rights. It was stated that true traditional Indian governments were not male chauvinist and would not prevent women from retaining their birthrights. Furthermore, it was argued that reinstatement was equally important to non-status Indian women who did not intend to return to their reserve, because reinstatement implied official recognition of one's cultural identity and a link to a homeland. And lastly, reinstatement was important in order to be able to transmit Indian identity to younger generations.

The Inuit proved to be supportive of the aboriginal women's

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5) Several informants claimed that once non-status Indian women had their birthright restored and intended to return to the reserve, they might challenge their band council's opposition to let them in on grounds of sexual equality rights within the Charter (sections 15 and 28) According to them, using individual Charter rights could not endanger Indian self government (sections 25 and 35) since band councils are merely administrative agents of the federal government in accordance with the Indian Act

6) Prime Minister Levesque of Quebec used aboriginal women to advance the interests of the provincial government against Ottawa rather than sincerely supporting the political plea of aboriginal women, according to several informants

political claims, as was the case with the (Historic) Metis. A woman representative of the MNC made the following statement:

> 'European and Canadian laws have worked against Metis women. Because of this we need a constitutional guarantee that there will be no discrimination anymore. The weakening of the position of Metis and other native women was imposed on us by foreign laws and economic discrimination. As a self-governing nation the Metis will restore the full dignity of our women, as well as our men. The Metis community included many women who lost status under the Indian Act. Some of these women wish to regain Indian Act recognition. Many others completely identify as Metis. We remain in unity with all our native sisters. The MNC strongly supports the general position of NWAC. The equality clause must be included under section 35' (cited in: Krosenbrink, 1983, p.73).

With the Assembly of First Nations the case was different. It upheld its position that sexual equality was sufficiently covered in the Constitution Act and further discussion on a section 35 amendment in this respect was not relevant. Instead, section 35 should be discussed in relation to Indian self-government. Sexual equality was a matter to be decided by individual bands once the matter of Indian self-government was solved. This way also, AFN could avoid internal conflicts due to the sexual equality issue (7). A delegate from the AFN stated at the First Ministers' Conference:

> 'We would like to make it clear that we agree with the women who spoke so forcefully this morning that they have been treated unjustly. The discrimination they suffered was forced upon us through a system imposed by white colonial government through the Indian Act. It was not the result of our traditional laws, and in fact it would not have occurred under our traditional laws. We must make it perfectly clear why we feel so strongly that we must control our own citizenship (...). The AFN maintains that "equality" does already exist within the traditional "citizenship code" of all First Nations people' ('Unity', 1, 1, 1984, pp. 10-11).

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7) Particularly Indian bands in Alberta were against any federal legislation that determined band membership, including reinstatement of non-status women.

This statement clearly reflects the Indian people's opposition ideology in which the traditional culture argument is embedded, as well as the link between sexual equality and self-government. Nevertheless, the fact that Indian women suffer from discrimination by their own men nowadays, and that they fear perpetuation of these practices within future self-government, unless legally abolished, was ignored.

At a press conference, AFN appeared annoyed that aboriginal women used the provincial governments' seats because it feared their power in constitutional amending procedures pertaining to aboriginal rights. It claimed that sexual equality took so much time, and blamed the federal and provincial governments for embarrassing status Indians and clouding the aboriginal rights issue ('Globe and Mail', 17/3/83). The AFN intended to relegate the Indian women's struggle for sexual equality to a future, non-constitutional agenda. Nevertheless, the AFN was forced to take a position on sexual equality. Status Indians emphasized that Indian band membership (or citizenship) was the prerogative of First Nations and could not be dictated by any former government. On the condition that the federal government promised not to interfere in future Indian band membership, the AFN was willing to accept a sexual equality amendment to section 35 (Holmes, 1987, p. 6).

The first First Ministers' Conference resulted in the signing of a Constitutional Accord on Aboriginal Rights. The accord comprised the following agreements:

1. In addition to the First Ministers' Conference of 1983, at least two constitutional conferences were to be convened before April 17, 1987. The purpose of the future conferences was to resolve the matter of aboriginal self-government.
2. Federal and provincial governments committed themselves to consult with aboriginal peoples before a constitutional amendment on aboriginal rights would take place.
3. Future as well as existing land claim agreements were constitutionally protected.
4. To section 35 would be added subsection 4: 'Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons' (Govt. of (Canada, 1983). The accord was signed by sixteen parties, that is the federal government, nine provincial governments, two territorial governments and four national

aboriginal organizations. Quebec, however, had not signed the agreement (Dept. of Justice, 1985, p. 2).

Despite the proposed constitutional amendment pertaining to sexual equality rights, NWAC was still not satisfied. The wording of section 35(4) could be interpreted as being applicable to merely aboriginal and treaty rights and not to 'other rights' (see section 25) such as the right to self-government. This was due to the confusion around sections 15, 25, 28 and 35 and the distinction between aboriginal, treaty, and other rights. It was considered necessary to have a sexual equality guarantee for other rights as well. Furthermore, the term 'existing aboriginal rights' was still present in section 35. ICNI and MNC argued that more legal guarantees for Indian women were needed because 'existing aboriginal rights' reaffirmed sex discrimination. According to NWAC, without proper reinstatement of non-status women and their children beforehand, sex discrimination could be perpetuated. Reinstatement had to be arranged by an Indian Act amendment. Furthermore, NWAC claimed that sexual equality must govern the development of Indian self-government without exception or derogation. The organization required another section 35(4) amendment for that purpose (NWAC, 1984, p. 54). Thus, more efforts had to be made to reach its political goals in 1984.

6.2 The 1984 First Ministers' Conference and Bill C-47

The official agenda for the second conference comprised four issues: aboriginal self-government; equality rights; aboriginal title, treaties and treaty rights; and land and resources. However, by the time that the conference was held on March 8 and 9, 1984, it appeared that only the first two issues were going to be discussed. Since ratification of the Constitutional Accord of 1983 had not yet taken place and since NWAC was still not satisfied, the organization lobbied actively at preparatory constitutional meetings in order to have its views reflected on the issues of both sexual equality and self-government (8).

In October 1983, the Penner report on Indian Self-Government

8) Ratification took place on June 21, 1984, and is known as the Constitution Amendment Proclamation. In fact, the first amendment to the Constitution Act pertained to the rights of the aboriginal peoples (Tennant, 1985, pp 330-331).

was released. The House of Commons Special Committee had recommended to entrenchment of the right to Indian self-government in the Constitution Act and to give legislative powers to Indian bands, particularly referring to band membership. However, the federal government did not accept the committee's recommendations and stated that it would prepare new legislation (9). The federal government wanted to make sure that no form of Indian self-government could violate constitutional rights, such as equality rights, and intended to arrange self-government by way of federal legislation (such as the Indian Act). Besides, the provinces would not agree to the committee's recommendation to entrench aboriginal self-government in the Constitution Act (Hawkes, 1985, pp. 9-10). The above implied that the federal government was only willing to delegate certain powers to Indian bands with an obligation to bring band membership and sexual equality under new Indian Act regulations.

In referring to the Constitution Act, sexual equality as a principle was accepted in 1983 but the legal procedures needed more clarification. At the preparatory meetings, the federal government showed its willingness to adjust section 35(4) to the terminology as proposed by NWAC. However, AFN remained reluctant to discuss the matter of sexual equality at all. Nevertheless, NWAC continually framed its political claims to sexual equality within the conceptual framework of self-government in order to make the issue relevant to the AFN.

On the first day of the second conference, aboriginal self-government was discussed. The federal government proposed to entrench self-government as a right in the Constitution Act, to be followed by tripartite negotiations between Indian bands, federal and provincial governments. Subsequently, agreements on self-government were to be implemented through legislation. This is called the top-down approach. However, only Manitoba, Ontario, New Brunswick, and Nova Scotia agreed to this solution. The other provinces, representing the majority of Canada's population, remained a stumbling block and, therefore, the matter of aboriginal self-government could not be solved (ICNI Newsletter, 1, 3, 1985, pp. 3-12).

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9) This Indian self-government Bill C-52 was presented on June 27, 1984, but died at the dissolution of Parliament. This bill was hardly discussed in literature and was not taken seriously, particularly by the AFN.

On the second day of the conference, sexual equality was discussed. International agreements, constitutional legislation, as well as future discussions on Indian self-government dictated that the matter be solved as soon as possible. NWAC leaders spoke through the seat of the NCC and PTMA representatives from Ontario, Quebec, and New Brunswick spoke on the matter through the provincial governments' seats.

With respect to sexual equality, the federal government proposed the following constitutional amendments that were made on the initiative of NWAC, ICNI, NCC, MNC, and government officials:

> 'Section 25(2) Nothing in this section abrogates or derogates from the guarantees of equality with respect to male and female persons under section 28 of this Charter.
>
> Section 35(4) Notwithstanding any other provision in this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons, and this guarantee of equality applies in respect of all other rights, and all freedoms, of the aboriginal peoples of Canada' (FMC, 1984).

The AFN had not cooperated in finding a resolution to the sexual equality issue. The assembly argued that if an amendment was really necessary, it should be sought in section 25(2). NWAC, however, upheld its position with respect to a section 35(4) amendment, which was also supported by a majority of the provincial governments. In particular the addition of 'other rights' to section 35(4) was welcomed. NWAC was still afraid that equality rights in section 25(2) might be endangered because section 25 stipulates that not all charter rights have to apply to the aboriginal peoples. The term 'existing aboriginal rights' in section 35 was not felt to be so much of a problem anymore since a new Indian Act was on its way that also dealt with the problem of reinstatement of non-status persons. Last but not least, a section 35(4) amendment was also considered stronger by NWAC because, next to section 15 of the charter, it dictated an Indian Act amendment. After all, section 35(4) dictated sexual equality with respect to all rights of the aboriginal peoples.

AFN was against the addition 'other rights' in section 35(4). It considered section 35(1) as a full box of aboriginal rights. Therefore, it may imply that other rights are not considered aboriginal rights or

it may imply inequality among aboriginal groups. The AFN argued that aboriginal rights follow from aboriginal title to the land and cannot be extinguished by any legislation. This is an ideological statement. The implications of the treaties and the Indian Act have shown reality to be rather different (Dalon, 1985, p. 102). Despite AFN's reluctance to support NWAC's position on section 35(4), the assembly appeared willing to discuss sexual equality. Its changed attitude towards sexual equality was not to the least credit of the lobbying activities of the NCAR. Particularly, personal networking between members of NWAC and AFN proved to be successful (NCAR, 1984).

At the First Ministers' Conference no agreement on the sexual equality issue could be reached. Nevertheless, the political clock was ticking away while fundamental questions remained unanswered: do Indian people want to replace the Indian Act by another Indian Act or should other ways be pursued to determine Indian band membership instead? And most of all, how does the sexual equality claim of Indian women fit into these questions?

The joint AFN/NWAC resolution on Bill C-47

After the 1984 First Ministers' Conference, both NWAC and AFN realized that they had to come to an agreement since the matter of sexual equality was urgent. Moreover, the federal government on its own terms was preparing legislation for both sexual equality guarantees and Indian self-government. The NCAR informed the AFN's leadership that the Native Women's Association was prepared to support the AFN's position on a section 25(2) amendment of the Constitution Act, provided that it would give NWAC a written guarantee (10). However, initially this did not happen.

After the failure of the second conference, the federal government focused on the legislative process and prepared an amendment to the Indian Act. It had to work hastily and therefore only three days of hearings were held with the aboriginal peoples to discuss the proposed changes (cf. Holmes, 1987, p. 7). There were several reasons for the mounting pressure to end discrimination to the existing Indian Act:

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10) NCC, ICNI and MNC were also requested to do the same.

1. Ratification of the International Convention on the Elimination of All Forms of Discrimination against Women, 1979 (cf. Sanders, 1983a, pp. 51-52).
2. The 1981 U.N. Committee on Human Rights decision Re Lovelace. It declared that Canada was in contravention of the Covenant on Civil and Political Rights, based on the discriminatory nature of the Indian Act.
3. The proposed equality clause within section 35(4) of the Constitutional Accord on Aboriginal Matters (1983), that was to be ratified soon.
4. Section 15(1) of the Canadian Charter of Rights and Freedoms guaranteeing equality between men and women as of April 17, 1985. This was perceived as the most important reason to pursue an Indian Act amendment.

AFN realized that self-government could only follow after the sexual equality matter was resolved and that a compromise between NWAC and AFN was necessary. It invited NWAC to a Special Legislative Assembly in Edmonton from May 16-18, 1984, dealing with section 12(1)b of the Indian Act. In an internal paper, called 'Strategy Suggestions', it read: ' (...) agree that Indian Act treats women unfairly, express commitment to equality clause in the Constitution, AFN leadership negotiate with NWAC in an attempt to resolve differences, priority be given to the development and implementation of First Nations Membership Codes, ensure that "sexual equality" and "equality amongst aboriginal peoples" do not arise in the next First Ministers' Conference by negotiating with other aboriginal groups beforehand' (NIB, 1984, p. 2). The entire NCAR was present at the Legislative Assembly, and as a result, a working relationship between AFN and NWAC was established and affirmed in a joint resolution, called the Edmonton Resolution. The resolution affirmed AFN's support to NWAC's political claim to removal of section 12(1)b of the Indian Act, including reinstatement of Indian persons who had lost their status or had never had it recognized as a result of this provision (AFN Bulletin, 2, 11, 1984, p. 1; Unity, 1, 1, 1984, p. 11).

AFN and NWAC knew that an amendment to the Indian Act would remove the sex-discriminatory status provisions, but each one of them was concerned with other issues that were connected to it. Whereas AFN focused on band membership regulations (self-government), NWAC focused on reinstatement and the link to band membership regulations. The Edmonton Resolution had the purpose

of anticipating the coming Indian Act amendment and held two main resolutions. First, sexual equality in the Constitution Act should be clarified by a section 25(2) amendment. Secondly, reinstated persons were to be put on a General Band List. They should then apply to the band councils for reinstatement to the Active Band List by procedures set out by the bands themselves.

However, AFN's and NWAC's perceptions on General and Active Band Lists were not totally in agreement (cf. AFN, 1985; Brewer, 1984). AFN argued that reinstated and first generation registrants were to be included on the General Band List. This implied that only status persons were recognized as Indian persons. Furthermore, band councils were to decide whether these persons were entitled to return to the reserve, to be registered on the Active Band List. Thus, reinstated persons would have no decision-making power as to band membership codes. On the other hand, NWAC argued that present band councils were government-controlled. Therefore, they should be replaced by authentic Indian band councils. The problem was, however, that too many bands accepted the Indian Act status regulations; as if women could lose their cultural identity and men could not (Brewer, 1984, pp. 2-3). Thus, NWAC wanted to replace the system of legal Indian identification by cultural self-identification. Therefore, the General Band List was also meant for Indians who did not have, and would never have, legal status. Furthermore, persons who are on the General Band List may participate in decisions on band membership codes. Persons who reside on the reserve, or are otherwise actively involved in community life - irrespective of their legal status - may be registered on the Active Band List which criteria are designed by the respective bands. This way, reinstated women would be able to have political decision-making power with respect to the development of band membership codes. Furthermore, non-status Indians may become band members as well.

Apart from developing a working relationship with AFN, NWAC also lobbied women politicians in order to have an impact on Bill C-47. On May 24, the NCAR met women parliamentarians and senators at the office of July Erola, who was the Minister of State responsible for Status of Women. Women politicians crossed party lines to support an immediate Indian Act amendment as proposed in the Edmonton Resolution ('MacLean's', 2/7/84).

On June 18, Bill C-47 was introduced. It appeared that the federal government based the Indian Act amendment primarily on the report

of the Sub-committee on Indian Women and the Indian Act from September 1982, including some of the recommendations made by the Special Committee on Indian Self-Government from October 1983. The following changes with respect to sexual equality were proposed:

1. No one should gain or lose status or band membership because of marriage.
2. Status and band membership should not be determined on the basis of sex.
3. No one should lose status or band membership without their consent. This pertained to the enfranchisement clauses.
4. Children of marriages between Indians and non-Indians, to one quarter Indian blood, should have status and band membership in the Indian parent's band. However, by 'Indian blood' was meant legal status.
5. No one should lose status because of the amendments.
6. Non-Indians and non-band member spouses or children should have the right to reside on reserves.

Following from the above, there would be a two year waiting period on the General Band List, after which reinstated persons and their children would be transferred to their former band. Under the proposed amendment the following persons were eligible for reinstatement: section 12(1)b Indian women; individuals whose father or husband was enfranchised; people caught up in the double-mother rule (section 12(1)aIV); and illegitimate children whose father was proven to be a non-Indian (section 12(2)) (see Appendix 1).

In a joint press statement, NWAC and AFN accused the federal government of restricting reinstatement for purely financial reasons. The so-called 'one-quarter blood line' was perceived as too limited. Furthermore, NWAC argued that reinstatement should involve the taking away of legal status from non-Indian women. Otherwise, sex discrimination was to be continued in an indirect way. Also, the bill initiated discrimination between generations (see Figure 6.1). Furthermore, the bill did not allow bands to design their own membership codes and hardly any financial or land provisions were made for bands to compensate for a future increase of reserve population (cf. AFN/NWAC Press Statement on Bill C-47, 22/6/84; AFN News Release, 29/6/84; 'Calgary Herald', 23/6/84).

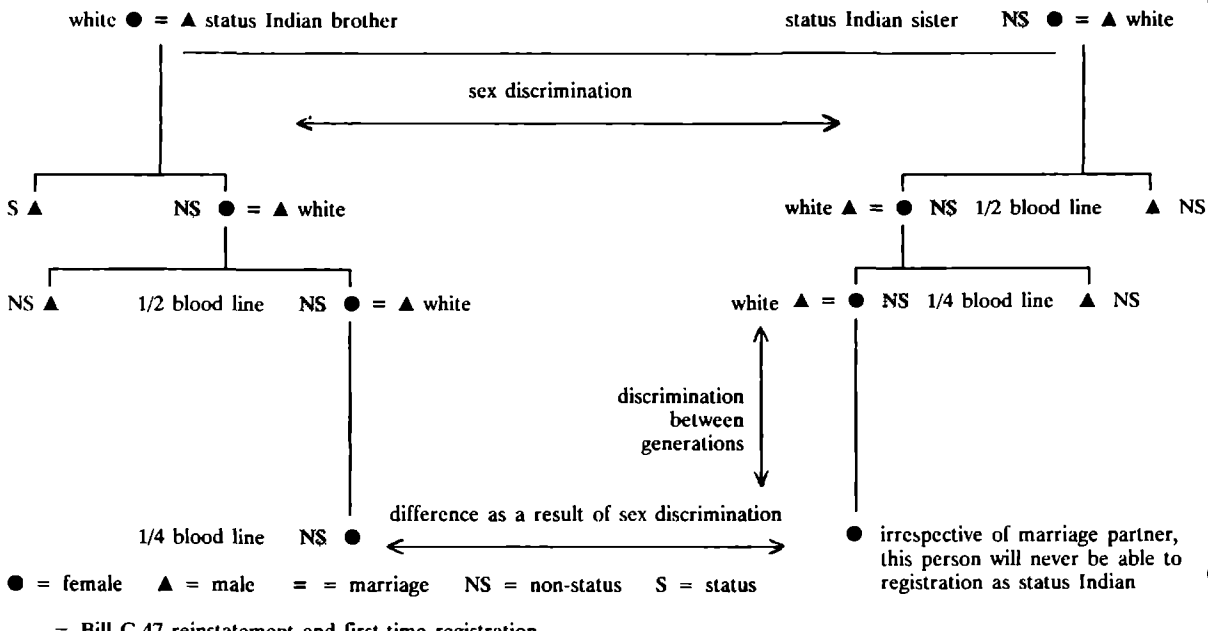

Figure 6.1 Bill C-47 Reinstatement and first-time registration

Bill C-47 passed through the House of Commons on June 29 but it was stopped at the Senate. Senator Charlie Watts, a former ICNI spokesman, appeared to have played a role in preventing the bill from being passed, as was in agreement with the wish of NWAC and AFN. This was at the last sitting day of Parliament before it was dissolved for the federal elections of September 1984. The stopping of Bill C-47 was felt to be a major victory by NWAC, which perceived it as a discriminatory act, and by AFN, which perceived it as a violation of the Indian people's right to determine their own band membership.

While NWAC gradually moved towards a working relationship with AFN, its relationship with NCC came to an end. Problems between NWAC and NCC had occurred because the NWAC leadership accused NCC of being male dominated in spite of the fact that several leaders were women (interviews 12/11/85 and 16/3/86). More important, however, was the difference in perceptions of the Indian Act. Whereas NWAC actually wanted to get rid of the Indian Act system, NCC was seeking recognition under that legal system. Tensions between NCC and NWAC came to a climax right after the Edmonton Resolution of May, 1984. NCC had not informed NWAC on its position on Bill C-47 and intended to remove NWAC from NCC's Board of Directors in November 1984. At the 10th Annual Assembly of NWAC that same month, the membership mandated the national office in Ottawa 'to function exclusively as a political body and to remove from NCC in order to work more closely with all aboriginal organizations and to speak independently on issues that concern aboriginal women' (AFN Bulletin, 3, 1, 1984, p. 8).

Despite NWAC's success in developing a working relationship with its male counterpart, the AFN, and in its assurance of AFN's support for the aboriginal women's political claim to sexual equality, there were still obstacles to be removed in preparing for the 1985 First Ministers' Conference. NWAC had to decide whether it wanted an independent seat at the next conference or not. A significant proportion of NWAC's constituency did not trust AFN. Furthermore, lobbying activities had to be intensified since the old Indian Act was still intact and April 17, 1985, was coming close.

6.3 The 1985 First Ministers' Conference on Aboriginal Constitutional Matters

Between the 1984 and 1985 First Ministers' Conferences significant changes had taken place. AFN and NWAC were able to uphold an Indian Act amendment that was not in agreement with their political claims. As the president of the Native Women's Association stated at the 11th annual assembly in September, 1985:

> 'I would ask you to think back to just about a year and a half ago when it was virtually unheard of within the Assembly of Chiefs (of AFN, LK) to have anyone outside of their circle, let alone representatives of aboriginal women, participate in their deliberations. Having been able to demonstrate that we are as concerned, if not more so, about preserving and protecting our Nations, the NWAC is now recognized as an important participant in their discussions, even if it is mainly done in a traditional way - that is, they speak but we tell them what to say' (SNWA Newsletter, October/November, 1985, p. 9).

This statement clearly reflects NWAC's perception of itself as an Indian organization, and affirms the sensitivity of NWAC's working relationship with the AFN. It also reveals the mixed feelings by NWAC's leadership about the necessity to integrate within the AFN. As an informant argued, AFN sent position papers to NWAC for women to review. However, aboriginal women wanted to participate in preparing AFN position papers on sexual equality, as well as on self-government (interview 16/3/86).

The four national aboriginal organizations, together with NWAC and the Inuit Women's Association, gradually increased their formal as well as their informal interaction. Aboriginal summits, mainly informal get-togethers of the leaders, had the purpose of discussing political positions and strategies in preparation for the 1985 Fist Ministers' Conference (ICNI Newsletter, 1, 4, 1985, p. 4). Nevertheless, the two national aboriginal women's organizations were not invited to participate in these summits. However, since they knew when such meetings took place, they often invited themselves.

The IWA had been acting through the ICNI constitutional seat since 1984. This association had never aspired to a separate seat since Inuit men's and women's views on all constitutional matters were unanimous. AFN offered NWAC its seat as of the 1985 First

Ministers' Conference. AFN's changed attitude was largely due to the efforts of the NCAR and the Edmonton Resolution of May 1984 (11). The IWA and NWAC were willing to drop the sexual equality issue as a separate agenda item at the third conference in order to bring the matter of aboriginal self-government to a solution. NWAC was inclined to do so for the following reasons:

1. The Edmonton Resolution had shown AFN's support for, and commitment to NWAC's political claims with respect to the sexual equality issue.
2. April 17 1985, the deadline for the existing Indian Act to be adjusted to the Charter rights in the Constitution Act, was coming close. After the defeat of Bill C-47, and with the installation of the new Conservative federal government, promises were made as to a speedy Indian Act amendment with consultation of the aboriginal people involved. Therefore, NWAC was invited too to discuss the Indian Act amendment proposal, Bill C-31, that was introduced in Parliament on February 28 1985.
3. The Conservatives wanted to prove that they, in contrast to the Liberal government, were able to achieve results. In order to anticipate a potential failure of the 1985 conference, they intended to use the required Indian Act amendment to deal with several issues at the same time, that is sex discrimination, reinstatement, and Indian self-government (Letter of Minister Crombie of DIAND to Minister Crosbie of Justice, 11/12/1984).
4. The traditional motherhood concept provided opportunities for NWAC to bring sexual equality within the conceptual framework of self-government. Therefore, the matter could still be discussed at the First Ministers' Conference. As an informant put it: 'If women had not attacked the Indian Act and made people aware, no one would be thinking of band membership and Indian self-government. Bands wouldn't be looking for new codes. The status quo would remain'. And furthermore: 'When we (Indians, LK) are able to live our lives according to our ways, we will not have to concern ourselves with discrimination based on sex or anything else since this is a practice foreign to our Nations (interview 15/4/86).

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11) It was only since May 1984, that AFN was willing to transfer the constitutional funds with respect to the sexual equality matter to the Native Women's Association.

On March 19, 1985, NWAC and the IWA jointly presented a letter to the Prime Minister of Canada concerning the upcoming conference. Copies were sent to all provincial and territorial political leaders as well as to the other four national aboriginal organizations. The letter dealt with the sexual equality issue. It communicated that although since 1983 aboriginal women had suggested a section 35(4) amendment, now they proposed to focus on either section 25(2) or section 28. NWAC and the IWA therefore suggested three routes by which the matter of sexual equality for aboriginal women in the Constitution Act could be finally solved:

1. A section 25(2) amendment, as proposed by the federal government at the 1984 conference (see section 6.2).
2. 'Section 25(2). Notwithstanding anything in this Charter, all rights and all freedoms of the aboriginal peoples of Canada are guaranteed equally to male and female aboriginal persons' (AFN draft of January 1985, supported by NWAC).
3. 'Section 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it, including the rights and freedoms referred to in section 25, are guaranteed equally to male and female persons' (ICNI and IWA draft of March 1985) (FMC, 1985).

NWAC and the IWA made it clear in this letter that they expected all participants at the conference to study these three options beforehand in order to come to a decision as soon as possible, since they expected aboriginal self-government to be the single agenda item. However, it was their opinion that sexual equality should be resolved before the matter of self-government was discussed.

On April 2 and 3 1985, the First Ministers' Conference took place. It appeared that the federal government had nevertheless put sexual equality on the constitutional agenda. The Prime Minister, in his opening statement, expressed the wish to resolve this matter to everyone's satisfaction and to allay once and for all any apprehension or confusion which might exist on this subject. He emphasized that the aim was to clarify the matter, to pursue a constitutional amendment only to strengthen the sexual equality provisions. For that reason, as chairperson, he had tabled a list of different possible formulations that had been raised at different stages of the constitutional process on aboriginal matters.

NWAC had decided not to pursue a separate seat at the 1985 conference but used the AFN seat instead. NWAC knew that the

federal government would not allow the association a separate seat, but that it nevertheless supported the Indian women's struggle for sexual equality. Despite the fact that sexual equality was an agenda item, and despite overall consensus to bring the matter to a close, it was not discussed. On the second day of the conference, a luncheon meeting was scheduled between government officials and aboriginal organizations, including NWAC, to prepare a constitutional amendment. However, the federal government had already presented its Political Accord proposal on self-government. Probably all attention was drawn hereto (cf. Hawkes, 1985, p. 28). Thus, the sexual equality provision in section 35(4) of the Amendment Proclamation remained intact.

Not only with respect to sexual equality, but even more so with respect to aboriginal self-government, the federal government was eager to achieve results at last. A significant reason was to prove to the electorate the Progressive Conservatives' success over the Liberals' defeat of the 1983 and 1984 conferences. Whereas the latter had been in favour of the so-called top-down approach, the new federal government favoured the bottom-up approach. This means that aboriginal self-government is only enforceable in accordance with negotiated agreements (Govt. of Canada, 1987, p. 3).

A day before the 1985 First Ministers' Conference, Prime Minister Mulroney had tabled a text covering the negotiating process for achieving an agreement on aboriginal self-government (Hawkes, 1985, p. 15). The bottom-up approach consisted of: self-government negotiations and settlements in tripartite and bilateral agreements; and, the entrenchment of aboriginal self-government as a principle in the Constitution Act. The proposed Political Accord entailed that federal and provincial governments would sign an accord with respective aboriginal organizations reflecting their willingness to negotiate aboriginal self-government. The self-government agreements that were reached were to be legislated at a later date. Whereas there was general support from the provincial governments, as well as from NCC and MNC, AFN and ICNI were against the Political Accord. The latter two did not settle for less than an unconditional constitutional entrenchment of the aboriginal peoples' right to self-government (Hawkes, 1985; ICNI Newsletter 1, 3, and 1, 4)(12).

Ever since the Amendment Proclamation nothing concrete had

12) At a meeting with the Minister of Justice to discuss the Political Accord again, both NCC and MNC declared to reverse their previous consent.

happened constitutionally as regards either sexual equality for aboriginal women or aboriginal self-government. Therefore, the federal government planned a two-track approach. This meant that, next to future constitutional negotiations, community based self-government agreements were to be sought ('Globe and Mail', 29/11/85)(13).

As far as NWAC is concerned, the association was still not satisfied with the sexual equality provision as stipulated in section 35(4) of the Constitution Act. However, NWAC knew that the federal government did support aboriginal women in their struggle for sexual equality guarantees. However, the federal government's position on the sexual equality matter was largely affected by national and international legal obligations, as well as by the feminist lobby in Canada. Therefore, the federal government was only prepared to do something for aboriginal women as far as it had done so for non-aboriginal women, and in terms set out by non-aboriginal women. Traditional motherhood as an ideological concept, and as used by the Native Women's Association, was primarily directed towards the AFN. Although AFN's position on the sexual equality matter cannot be solely attributed to NWAC's strategy, the traditional motherhood concept has still procured a major breakthrough. This was most obvious in the Edmonton Resolution (14). Ever since May 1984, NWAC's and AFN's political leadership have come closer together. Whether the relationship between the grassroots of the two organizations have also come closer together will be reviewed in the next chapters.

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13) The last First Ministers' Conference on Aboriginal Constitutional Matters was to be held in 1987, before April 17

14) In NWAC's documents and correspondence the traditional motherhood concept is implicitly referred to However, the NCAR explicitly referred to this concept in communication with NWAC This was affirmed by the committee members in interviews

7 BILL C-31: AN INDIAN ACT AMENDMENT AND ITS IMPLICATIONS

> 'Our ultimate aim is that, once we take care of this (Bill C-31, LK) - and we look upon it as a transitional period before we realize self-government and before we can re-establish ourselves as the nations that we are ... I want to emphasize that what we talk about here is an interim measure. We certainly do not see it as a be all and end all, and I know there have been different criticisms that we are in a contradiction because we talk one way about wanting the government to do certain things, yet we say we support self-government on the other hand. We suggest to you that what we are presenting today is not contradictory because, on the one hand, we are living in another system which is not ours. We are trying to correct it and improve it until we are back into ours. I really want to emphasize that' (president of NWAC, cited in: HoC, Issue # 28, 1985, p. 71).

If it were not for a sexual equality provision in the Constitution Act of 1982 dictating an Indian Act amendment, and the continuous struggle of NWAC, sex-discriminatory provisions might have been in place until the present day. This chapter primarily deals with Bill C-31, an act to amend the Indian Act, which had been enforced since April 17 1985. At that time, the constitutional process on aboriginal matters had not yet come to a close.

The first section will clarify that part of the amended Indian Act pertaining to sexual equality. I will also describe how Bill C-31 is tied into the aboriginal rights issue within the Constitution Act since the new Indian Act contains limited self-government provisions for Indian bands within the frame of band membership.

The second section deals with the last First Ministers' Conference in 1987. As it became clear that hardly any concrete results could be expected from the constitutional process on aboriginal matters, Bill C-31 became more and more important in terms of legal abolition of sex discrimination of Indian women, while at the same time allowing for the development of limited Indian self-governing institutions. For this reason, the implications of Bill C-31 are far reaching both for Indian women and Indian communities as a whole.

For obvious reasons this chapter is rather technical. However,

knowledge of the Indian Act and its implications is a prerequisite to comprehend how the issues of legal status, Indian band membership, and self-government are interconnected, and how they affect Indian communities, and particularly Indian women's social reality.

7.1 Bill C-31: legal Abolition of sex discrimination

Bill C-31 was introduced in the House of Commons on February 28, 1985 (1). While the 1985 First Ministers' Conference was held on April 2 and 3 the House of Commons Standing Committee on Indian Affairs and Northern Development was already busy hearing witnesses from aboriginal organizations regarding the feasibility of the three main goals of the bill: abolition of sex discrimination; restoration of Indian rights to those who had lost or had never had them; and entitlement of Indian bands to control their own membership. After about five weeks of hearings, the Standing Committee made a number of amendments to the bill upon recommendation by, in particular, NWAC. In order to anticipate criticism of its claim to Indian self-government while at the same time working on an Indian Act amendment, the Native Women's Association issued a press release on February 19. The association reaffirmed its position on sexual equality as related to Indian self-government and stated that all other positions on sexual equality reflect the use of wrong arguments in attempts to address aboriginal women's issues (NWAC press release 19/2/85).

Bill C-31 was given the Royal Assent on June 28. However, due to the coming into force of the equality rights in the Charter, the act took effect retroactively as of April 17 1985. Whereas NWAC was generally pleased with the final wording of Bill C-31, because section 12(1)b and the sections pertaining to enfranchisement were finally abolished, it was not satisfied and argued that details needed to be worked out in conjunction with aboriginal organizations. As far as the other national aboriginal organizations were concerned, NCC argued that Bill C-31 did not go far enough as to status entitlement,

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1) When given a closer look, Bill C-31 is not that new. The bill shows clear resemblance with an information brochure of the Dept. of Indian and Northern Affairs of 1982 in referring to issues in the Indian Act that required future change (INAC, 1982). Bill C-31 is also quite close to the recommendations of the House of Commons Sub-Committee on Indian Women and the Indian Act of 1982 as well as to Bill C-47.

whereas AFN considered the sections pertaining to band control of band membership too restrictive in terms of aboriginal self-government.

With respect to the main purposes of Bill C-31 mentioned above, a significant characteristic is the disassociation between legal status and Indian band membership. This was done in order to comply with the federal government's promise to AFN not to interfere in band membership. In the old Indian Act, status and band membership were in almost all cases interconnected. Only some 100 status Indians were registered on the General List, meaning that they were not band members (2). Thus, previous loss of legal status automatically entailed loss of band membership. Herewith, the disconnection from the cultural group and the homeland was complete. The disassociation between legal status and band membership within Bill C-31 has serious repercussions for persons entitled to reinstatement, and specifically for the '12(1)b women' and their children. Sections 5 to 14.3 of the new Indian Act are the most important ones in dealing with entitlement to legal status, reinstatement, and band membership (cf. INAC, 1985a). I will discuss these sections one by one (see Appendix 2).

Status and reinstatement entitlements

Sections 5, 6, and 7 refer to legal status. Section 6 deals with Indian persons who are entitled to be registered as of April 17 1985. Persons who already had, or who had acquired status due to the old Indian Act are protected. The same goes for persons who are members of bands that in future may be recognized as Indian bands according to the Indian Act regulations (subsections 6(1)a and b, IA, 1985)(3).

NWAC was not pleased with the federal government's

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2) DIAND's policy for a few years had been to take away a status Indian's band membership if that person had resided off-reserve for over two years (Holmes, 1987, p 26)

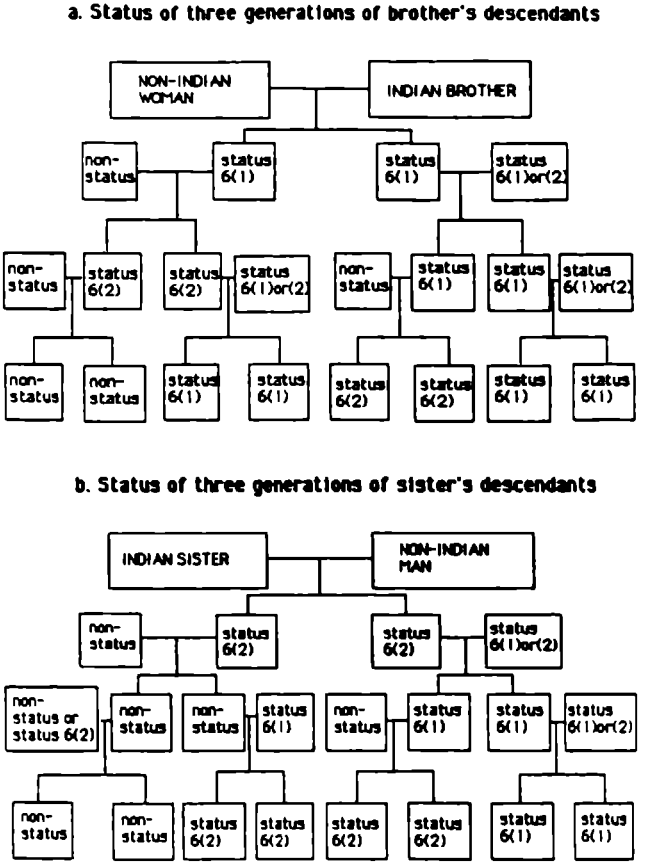
3) Over the last few years the federal government has come to recognize several Indian bands whose members were not registered in 1874 (see chapter 2.2) This holds particularly for Indian bands in Newfoundland The number of federally recognized bands has gradually increased from 573 in 1984 to 593 in 1989 However, persons belonging to bands that are not recognized as such remain unentitled to legal status This primarily concerns bands in the N.W.T., Prairies and British Columbia (cf HoC, Issue # 28, 1985, pp 64-65, INAC, 1984a, p 15, NCC, 1985b, p 10)

preoccupation with acquired rights. The result of this is that non-aboriginal women, who had previously acquired status through marriage with a status Indian man, were in a better position to transmit status, as well as band membership, to future generations than reinstated 12(1)b women (subsection 11(1)f, IA, 1970). The child of a non-Indian woman and a status Indian man would have status under section 6(1)f of Bill C-31 whereas the child of a reinstated 12(1)b woman and a non-Indian man would be a so-called 6(2) Indian person. The latter refers to a category of status Indians who are, firstly, not automatically members of an Indian band and, secondly, cannot pass on Indian status unless the other parent has Indian status as well, either under subsection 6(1) or (2) (see Figure 7.1). The Minister of DIAND, Crombie, admitted in his testimony before the Standing Committee that second generation children of reinstated Indian women do not have the same rights as those from status men. His argument was that somewhere the federal government had to 'draw the line' (HoC, Issue # 14, 1985, p. 24). Furthermore, NWAC argued that there is a possibility that a non-aboriginal woman had divorced her husband and remarried a non-Indian before Bill C-31 came into force. Their children would have Indian status under the new Indian Act even though they have no Indian ancestry at all (NWAC, 1986, p. 10). Therefore, the association had proposed to attach the right of so-called previous 11(1)f women to their affiliation with the bands of their spouses. Hence, if these women were widowed or divorced and did not live on the reserve anymore, they should not be able to pass on Indian status and band membership (HoC, Issue # 28, 1985, p. 58).

Section 6(1)c is of crucial importance since it pertains to reinstatement entitlement of persons who had lost legal status, and to first-time registration of those who had never had Indian status as a result of the sex-discriminatory provisions in the old Indian Act. The federal government estimated that in 1985 approximately 75,000 persons were eligible for reinstatement (cf. Manitoba News, 4, 4, 1985, p. 2; Manyfingers, 1986). First of all, persons who had become victims of the double-mother rule in the old Indian Act were reinstated and received automatic band membership.

The largest category of 6(1)c reinstated Indian persons is made up of the 12(1)b women. Their band membership is automatically restored as well. NWAC was in particular pleased with this regulation although it realized that in terms of aboriginal self-government it could create problems. Persons who receive automatic

Figure 7.1 Bill C-31: residual sex discrimination



Source: Holmes, 1987, p. 23

band membership through the new Indian Act are considered 'electors', meaning that these persons are entitled to participate in their band councils' decision-making process regarding future band membership codes. This was to prevent band councils from denying the rights of reinstated Indian women and to stop sex-discriminatory practices.

NWAC was able to reconcile the contradiction between asking the

federal government for sexual equality guarantees on the one hand, and striving for aboriginal self-government on the other hand. It argued that restoration of status and band membership is not an infringement on the constitutional right to self-government because existing Indian governments are working under the existing Indian Act system. Once, everybody of Indian ancestry has his or her legal status and band membership restored Indian bands, within the meaning of the Indian Act, can be abolished and Indian nations can start developing self-government (HoC, Issue # 28, 1985, p. 98). As NWAC argued, true Indian self-government is only possible when women are able to participate on an equity basis. This way, as centre and core of Indian cultures, they can take up their traditional roles and tasks. In the previous chapters NWAC's position on Indian women's roles and positions within Indian self-governing institutions was discussed within the conceptual framework of traditional Indian motherhood. Hence, NWAC was not in favour of perpetuation of the Indian Act system but wanted to use Bill C-31 as a means to reconnect all persons of Indian ancestry to their communities as they had been, or were entitled to be, before the Indian Act was ever developed.

There is a whole complex of problems involved with the reinstatement issue of 12(1)b women. First, there is the problem of the 'one-half blood line'. It means that, in case children of reinstated 12(1)b women have a child by a non-status person, this child is not entitled to Indian status. As the Vice-president of NWAC stated: 'The blatant discrimination we as Indian women have suffered for 116 years will not become less repugnant if suspended for two generations' (HoC, Issue # 28, 1985, p. 72). Thus, the second generation descendants of 12(1)b women are denied their birthright and are the first to feel the residual sex-discriminatory effects of Bill C-31 (see Figure 7.1). This is often referred to as 'the second-generation cut-off'. In contrast to the new act Bill C-47 provided for registration of second-generation descendants. The Indian male who married a non-status female before April 17 1985 is still in a better position to transmit legal status (cf. 'MicMac News', May, 1986; NWAC, 1986, p. 9).

The second problem with reinstatement of 12(1)b women and their children concerns band membership. Although the dependent 6(2) children have a right to reside on the reserve of which their mother is a member, it is not certain whether independent 6(2) children and their non-Indian fathers are allowed to reside on the

reserve, let alone become accepted band members (cf. Holmes, 1987, p. 18). Thus, the family unit may be threatened in such a situation, and this implies that reinstated 12(1)b women are indirectly prevented from exercising their band membership. They might not return to the reserve if their children cannot obtain band membership according to the new band codes (Bear et al., 1985, p. 3)(4). Another aspect involved in the question of band membership of reinstated persons concerns money. With regard to the implementation of Bill C-31 it is obvious that bands need more resources to accommodate the return of reinstated women and children to reserves (5). Although the federal government, and particularly DIAND, had made certain promises in this respect, it had been too vague in terms of continuation of funding and increase of land base. Given the overall bad socioeconomic situation on almost all reserves in Canada, it is likely that some band councils are hostile towards the return of reinstated persons, in order to protect the already fragile position of band members who live on-reserve (HoC, Issue # 28, 1985, p. 69).

The third problem is that section 6(1)c does not deal with all former legal aspects of sex discrimination which was a thorn in the side of NWAC and its constituency. For instance, Indian women who married Indian men who were citizens of the U.S.A. lost status as well. Although these women may become reinstated when they are Canadian citizens, nothing concrete is done to restore this situation adequately. Furthermore, due to the Option Clause of 1981, several Indian women who had married non-status men did not lose status. The moratorium of the old sex-discriminatory provisions, however, was not lifted. Therefore, these women have 6(1)c status instead of 6(1)a status. Many of these women have probably continued to live on the reserve since the moratorium did not strip them of band membership. Hence, the awkward situation occurs that children of these women who have always lived on-reserve have only a

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4) The Quebec Native Women's Association frequently argued that on these grounds Bill C-31 is in violation of articles 2, 7 and 16(3) of the United Nations Declaration of Human Rights (1948), of articles 1, 2(1), 3, 17(1) and 26 of The Covenant on Civil and Political Rights (1976), and of section 15 of the Canadian Charter of Rights and Freedoms (1982) (HoC, Issue # 24, 1985, pp 5-10, HoC, 1988b, p. 33)

5) The attentive reader may have the impression that I am only concerned with recent 12(1)b victims and their children. However, legal sex discrimination has existed since 1869 but it was only after the second World War that mixed marriages took place on a larger scale Especially when these marriages ended, either through the decease of a spouse or divorce, the consequences of 12(1)b were disclosed

conditional right to band membership (HoC, Issue # 28, 1985, p. 66; cf. INAC, 1985b, p. 31, p. 38). Should these children not be able to obtain band membership in future, their mothers are compelled to leave the reserve.

Furthermore, women who had to change band membership due to their marriage with a status Indian man from another reserve had their birthright denied by the old act (section 14, IA, 1970). Despite the sex-discriminatory nature of this regulation, they are not reinstated as band members of the reserve on which they were born and grew up (HoC, Issue # 28, 1985, pp. 66-67). To many persons, if they had to make a choice between legal status and band membership, the latter is more important for it (re)establishes their link to the homeland and reinforces their sense of belonging.

The fourth problem in connection with reinstatement of 12(1)b women and their children brings us to the practice of sex discrimination on the Indian band level. As we know, Indian bands comprise the constituency of AFN. So, it is important to review AFN's comments on Bill C-31. The AFN's position on the Indian Act has always been ambiguous. On the one hand, it claims that the Indian Act infringes the aboriginal peoples' right to self-government, while on the other hand, it wants to continue the legal status system. Therefore, this organization was not against the reinstatement of, primarily, 12(1)b women and their children but it opposed the automatic restoration of band membership of persons who had lost legal status as a result of the sex-discriminatory regulations in the old Indian Act. The president of the Native Alliance of Quebec - a member association of the NCC - thereupon argued:

> 'Many of us who lost our status or never had our status have maintained our cultural purity more so than many status Indians (HoC, Issue # 18, 1985, p. 45). The AFN claim they do not want a bunch of people who are arbitrarily made Indians flooding the reserve. How soon we forget. They, themselves were arbitrarily made Indians by the same Indian Act' (ibidem, p. 47).

Whereas previously AFN's hidden motto has been 'the only true Indian is a status Indian', as a result of Bill C-31 it became 'the only true Indian is a band member'. The AFN was of the opinion that persons who had legal status before the new Indian Act came into force are the only persons entitled to decide on future band

membership of reinstated persons. Its position on this matter was closely related to the great variety of opinions from Indian bands themselves. Whereas several bands had allowed non-status Indian persons on their reserve because they were still considered members of the community, other bands had evicted such persons. Due to local control mechanisms and the Option Clause the situation had become quite diverse on reserves (cf. INAC, 1985b). The legal as well as racial diversity of persons living on a reserve may be an indication of the band's opinion on the Indian Act. By putting the issue of band membership of reinstated persons in the hands of individual bands, the AFN tried to secure and to maintain its role as a national representative body.

Other persons entitled to reinstatement as well as to automatic band membership according to section 6(1)c are illegitimate children of status Indian mothers who had lost status upon proof of their non-status parency (subsection 12(2), IA, 1970). In future, women will be compelled to reveal the identity of the fathers of their children. Otherwise, it will be assumed that the father is not a status person and the children will receive 6(2) instead of 6(1) status. However, it may be a sensitive issue to reveal the father of your child if you have a secret liaison and live in a small community, as is the case with many reserves. Furthermore, some fathers may not wish to recognize their children in law (cf. 'Toronto Star', 23/5/87).

In 1982, the Supreme Court ruled in Martin versus Chapman that the illegitimate son of a status man and a non-status woman was entitled to legal status in accordance with subsection 11(1)c of the 1970 Indian Act: 'Subject to section 12, a person is entitled to be registered if that person is a male person who is a direct descendant in the male line of a male person' (IA, 1970, pp. 4254-4255). Illegitimate female children of such a union did not gain status. Under Bill C-31, the latter have status under 6(2) whereas their brothers, who had status before 1985, have status under 6(1). If the brother marries a non-status person, his children will have status. If the sister does the same, her children will not have status (HoC, Issue # 28, 1985, p. 59; NWAC, 1986, pp. 9-10). Apart from this, there can be differences of legal status and band membership due the date of birth of illegitimate children. Before 1956, no illegitimate children received legal status and band membership. In the case of two siblings, respectively born in 1955 and 1960, this means that under the new act the first will have only 6(2) status, whereas the latter will have 6(1) status (subsections 11(1)e and 11(2), IA, 1970).

Minor children who were enfranchised because their mother married a non-status person after they were born are entitled to automatic reinstatement under subsection 6(1)c Since 1974, children under the age of majority were no longer enfranchised because of their mother's reunion with a non-status person. However, this did not affect children born after that marriage had taken place.

Children, both of whose parents have 6(1) status according to Bill C-31 comprise the last category of persons under subsection 6(1)f, entitled to status and automatic band membership, providing that their parents belong to the same band. This is an interim measure that will exist until bands have taken control of their own band membership codes, which is expected to happen within two years after the amended Indian Act is enforced.

In spite of what was claimed by the federal government not everybody whose Indian rights were denied is able to retain them through either section 6(1) or 6(2). Furthermore, not everybody entitled to reinstatement has a right to automatic band membership. I have already mentioned the children of 12(1)b women who are reinstated under section 6(2). Persons who were previously enfranchised under subsections 12(1)aIII and 109(1) had only a conditional right to band membership, meaning that if the respective band membership codes cannot be met, they are status Indians without a connection to their homeland (subsections 6(1)d and e, IA, 1985). The reason for this is that the federal government argued that these persons had 'voluntarily' given up Indian status in the past. This matter concerns some 8,000 Indian persons. When Bill C-31 was introduced, reinstatement of this category of enfranchised persons was not included. Both NWAC and NCC had strongly urged the reinstatement of all enfranchised persons since they were of the opinion that 'voluntary enfranchisement' was hardly attainable as a viable argument. Before 1920, Indian persons who wanted to obtain a university degree, to practise law, or to become a clergyman had to become enfranchised. Until repeal in 1951, Indian persons who resided abroad for more than four or five years, and without the consent of the Indian agent, were enfranchised as well. In several other cases, Indian agents pushed people towards enfranchisement and many Indian persons were led to believe that it was the only way to get what they referred to as a decent job (HoC, Issue # 28, 1985, p. 65; 'MicMac News' May, 1986, p. 30; NCC, 1985a, p. 1, p. 5 and 1985b, pp. 7-8).

Subsection 6(2) of the new Indian Act refers to persons entitled to

legal status without automatic band membership and with a limited capability to transmit status. A person, one of whose parents is an Indian under subsection 6(1), will be registered in this category. Whether persons are born in or out of wedlock is not relevant anymore after April 17 1985. Subsection 6(2) entails the following groups of persons who experience residual sex discrimination: children of reinstated 12(1)b women and female children of status males and non-status females born out of wedlock before Bill C-31 was enacted. NWAC was dissatisfied with Bill C-31 because it perpetuates sex discrimination of women, at least on an indirect basis.

In conclusion, persons who were 'voluntarily' enfranchised, as well as 6(2) status Indians, will always have to apply for band membership, either at the band council or at DIAND. Furthermore, the distinction between 6(1) and (2) legal status concerns the competence to pass on Indian status to first and second generation descendants. This distinction is perceived by NWAC as a disguised political plan to continue the Indian Act system and to limit the number of Indian persons through the status regulations - as was the case with the old Indian Act. I often heard comments from informants that, given the growing number of (legally) mixed marriages, Bill C-31 would have the effect that after three generations there would be no status Indians anymore.

Section 7 of the new Indian Act pertains to persons who are not entitled to legal status. Subsection 7(1) stipulates that women who gained Indian status through subsection 11(1)f of the old Indian Act and thereupon lost it before Bill C-31 was enforced have no right to reinstatement. The same applies to the children of these women. This was enacted in order to prevent non-aboriginal persons from asking for reinstatement. This regulation was criticized by both NWAC and NCC. Because of the inherent racial connotation created by the Indian Act system - legal status going hand in hand with Indian ancestry - one had forgotten that among the '11(1)f women' were Indian women as well. For instance, Sandra Lovelace whose loss of Indian status had become a significant international legal case, remarried a status Indian man from her reserve before Bill C-31 was enacted. If Lovelace had lost her status again through remarriage with a non-status man, she would not be entitled to reinstatement in spite of her Indian heritage (HoC, Issue # 18, 1985, p. 22). In order to protect women who were born with Indian status, subsection 7(2) was created as an exception. Subsequently, subsection 7(3) protected

children of the women mentioned above. Nevertheless, NWAC does not believe in the exemptions to section 7. It argued that it is better to review reinstatement on an individual base. This way, it may be possible to establish a true link between Indian ancestry and legal status.

Another critical point that NWAC made was that people themselves have to take the initiative to apply for reinstatement. The Native Women's Association argued that the federal government should reinstate all persons of Indian ancestry since it had been responsible for the taking away or denying of Indian legal status. Although the application form in itself looks quite simple, it is an incredibly complicated exercise to determine status applicability (see enclosure 7.1). There are many entitlement categories involved spanning many years of amendments, from 1876 until 1985.

The federal government realized that serious efforts should be made in order to right a wrong from the past, since this was what the new Indian Act was about. DIAND set up a toll-free telephone number through which persons could ask for more information on Bill C-31. Furthermore, particularly NWAC and NCC were asked to help with the implementation process that should be completed before June 28, 1987. On November 14 1985, the Minister of DIAND announced implementation funding to fifteen regional and national aboriginal organizations, among which were NCC and NWAC ('INAC Communique', 14/11/85).

In January 1986, NWAC hired a national coordinator for the Bill C-31 implementation project. Based on the principle of providing information, assistance, and advocacy for individuals applying for reinstatement or first time registration, the following activities were performed: development of resource material; the organization of national conferences and workshops throughout Canada in order to discuss all aspects of Bill C-31 with the grass roots; data gathering and research on Bill C-31; and preparation of an implementation report in order to direct the federal government regarding future amendments to the Indian Act (Chabot, 1987, p.3; NWAC, 1985a and 1986). Inhowfar the Native Women's Association, as well as all other aboriginal organizations, have been successful in stimulating Indian persons to apply for legal status will be assessed in the next chapter. Encouraging Indian persons to apply for status and reinstatement was necessary since a large proportion of Indians does not have adequate knowledge of the old and the new Indian Act.

Band membership

Sections 8 to 14.3 of Bill C-31 pertain to band membership. Section 10 is the most important one since it refers to the right of Indian bands to assume control of their own membership. There are several procedural requirements for the legal transfer of control of band membership from DIAND to an Indian band. First, the chief and band council - who normally have a strong impact on the designing of membership codes - have to be chosen in accordance with the Indian Act. Secondly, the act determines who is entitled to vote in band elections as well as in band membership decisions (6). For band membership rules to have federal recognition, they must be approved by a majority of band electors. Note that a majority of the total electorate is required, not a majority of the electorate living on-reserve. This allows, in particular, reinstated 12(1)b women to participate in band membership decisions. Thirdly, if a band does not act to assume control of membership within two years after Bill C-31 was passed in Parliament, that is on June 28 1987, membership provisions set out in section 11 of the Indian Act will then prevail, and Indian status will continue to confer band membership automatically. Fourthly, bands will always have the option to assume control of their own membership but all persons who have acquired band membership during the period that DIAND was in control cannot have their membership taken away unless they break a band rule (INAC, 1985c, p. 10). Fifthly, although the by-law making powers of band councils have been increased, they still have to be consistent with Indian Act regulations (7). The AFN and NWAC do not recognize Indian bands' control of their membership as a true self-government right; it is still the federal government that determines the political structure of reserves within the legal framework of the Indian Act.

As far as membership codes are concerned, bands are not allowed

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6) However, in the case of bands that have recognized customary elections, the electorate consists of those entitled to vote according to customary law. Otherwise, electors are band members over 18 years of age who are normally residing on reserve, or entitled to live on the reserve since they acquired band membership through the new Indian Act.

7) Section 81 of the new Indian Act is expanded to enable bands to control residency of band members, non-member spouses, and children of band members. Residency by-laws can have the effect of restricting the return of reinstated persons and their families. Furthermore, the maximum fines for violation of by-laws have been dramatically increased (IA, 1985, pp. 42-44).

to disregard the rights of reinstated persons who have their band membership automatically restored. Moreover, band membership rules can be overruled by the Charter rights. Thus, sexual equality rights have to be respected. Subsection 10(5) ensures that all persons who regain or are entitled to gain status under section 6(1)c have an acquired right to band membership which may not be taken away because of anything that occurred in the past (such as a woman's marriage to a non-Indian or a child having a non-Indian father) (cf. NWAC, 1986, p. 16). In spite of this, problems for Indian women, particularly with regard to sex discrimination on the band level, are not over yet. Legal sexual equality guarantees do not automatically presume that there is no room for hidden sex discrimination. I will deal with this matter in the next chapter.

According to the Alberta division of NCC, sexual equality will remain a controversial issue on the Indian band level. The organization based its argument on the fact that no high percentage of bands in Canada opted out of 12(1)b in 1981, and only a little over 30 per cent supported the joint AFN/NWAC Edmonton Resolution of 1984 (Alberta NCC 1985, p. 6). As a matter of fact, several bands in Alberta, particularly those belonging to the Coalition of First Nations, stated that they were prepared to conflict with the sexual equality rights in order to maintain the existing band membership system (cf. Davies, 1985b; HoC, Issue # 4, 1988a, pp. 6-7). These bands had adopted the old Indian Act band membership system as their traditional organization. For this reason, the Alberta IRIW and the Quebec Native Women's Association wanted the federal government to provide bands with basic guidelines in order to prevent (hidden) sex discrimination to constitute the foundation upon which band membership issues are based (cf. Bear et al., 1985, p. 8; HoC, Issue # 24, 1985, p. 32, p. 38).

Reinstated persons with an automatically-acquired right to band membership usually live off-reserve or will not have taken up residency yet immediately after their reinstatement. Since these persons, of whom the majority consist of former 12(1)b women, do not live on-reserve (yet) and may not have been informed of the date that band membership codes will be decided, they cannot adequately exercise their elector's right. NWAC argued: 'Our position is that every citizen of a First Nation should have a part to play in the governing of that nation regardless of where she or he resides' (HoC, Issue # 28, 1985, p. 63). All persons with legal status or those who are reinstated, whether living on or off-reserve, should have band

membership. However, the right to design band membership codes may be left with those who live on-reserve. Within one year following the adoption of the code, it should be ratified by all band members (ibidem, p. 63). An NWAC informant explained to me that what the Native Women's Association wanted for all persons of Indian ancestry was what I was already legally entitled to; even though I lived abroad I was still considered a citizen of the Netherlands and could therefore vote in Dutch elections.

Control by bands of their own membership has the advantage that persons who have no Indian status may be recognized as band members. Hereby, in-group recognition of an individual's belongingness to a particular community can be institutionalized. Furthermore, traditional adoption rules that were previously not recognized can now be incorporated in band membership codes. Lastly, even if second generation descendants of former 12(1)b women cannot obtain legal status, they may still be accepted as band members. This way, bands themselves would diminish residual sex discrimination as a result of the limited reinstatement entitlements in the new Indian Act.

Legal status and band membership are each a self-contained set of rights, one dependent on federal law, the other on the band's law. Legal status refers to an Indian person's right to free post-secondary education, medical assistance, and exemption from provincial and income tax. These are financial benefits. Band membership, however, refers to a much broader range of entitlements:

1. treaty money and a share in band income from oil and gas revenues or sale of surrendered lands;
2. right to live on the reserve, to return to the reserve when retired, and to be buried there;
3. recognition of birthright and acknowledgement of band affiliation;
4. right to own and inherit property on the reserve;
5. right to vote in band elections and to seek election as chief or band councillor;
6. eligible for on-reserve housing and the right to health care services on the reserve; and,
7. right to elementary and secondary education, most of which are delivered by bands themselves and contain Indian curricula.

Many Indian persons are in such a marginal socioeconomic position that they are compelled to seek the benefits of their legal status

although status may also be important to a person's dignity and personal sense of identity. For economic reasons, legal status may be most important but when reinstated persons find out they might not be able to obtain band membership, the economic reasons become more and more unimportant. The persons I interviewed were unanimous in their statement that they valued band membership far more than legal status now these were disassociated from one another. Most bands are pitifully poor but band membership is nevertheless considered desirable because it permits a person to live close to relatives and to enjoy the sociocultural life of Indian society. Therefore, the homeland concept was a recurring theme during these interviews. Persons who do not intend to return to the reserve are eager to be connected with their 'homeland'. A quotation from a spokesperson of the Prairie Treaty Nations Alliance illustrates this clearly:

> 'I have lived and worked off the reserve for about 20 years, but you have that feeling that this is home. I do not really know how to describe it, but to me it is home, and I think a lot of Indian people feel the same way. They grew up there, they have family there, and it is a place they can call their own. It is a place where they want to die (HoC, Issue # 27, 1987, p. 19).

It was also considered very important to be able to transmit band membership to the children. It is for this reason that NWAC argued that first generation children of reinstated 12(1)b women are discriminated against because they have only a conditional right to band membership. Since reinstated 12(1)b women are hampered in transmitting band membership to their children, it is felt that they cannot perform the roles traditionally accorded to them, as embedded in the traditional motherhood concept. The Native Women's Association has always maintained that all persons of Indian ancestry should be entitled to both status and band membership: 'To suggest that our people would welcome restoration of a right to be "status Indian" is to make a mockery of our beliefs, cultures and traditions' (HoC, Issue # 28, 1985, p. 61). Bill C-31 fails to recognize cultural affinity and preference as well as blood ties since legal recognition is established but not band membership (Bear et al., 1985, pp. 4-5).

Due to different status and reinstatement entitlements, the disassociation between legal status and band membership, and

possible control of the latter by bands themselves, the following categories of Indian persons exist as a result of Bill C-31:

1. 6(1) and 6(2) status Indians of whom the latter have less legal capacity to transmit status. The latter category has to be careful in its choice of the child's future other parent. If this person does not have legal status, 6(2) Indians cannot transmit Indian status.
2. Status Indians without band membership (section 6). They may be stigmatized by their own people as a second class of Indians since the trend may become to only recognize status Indians with band membership as 'real Indians'. This category of persons has no established homeland connection. Furthermore, they receive fewer services than on-reserve status Indians since they are caught up in federal and provincial disputes over whose jurisdiction these Indians fall into (cf. HoC, 1988b, p. 86).
3. Non-status Indians without band membership. These persons have no aboriginal rights whatsoever.
4. Status Indians with band membership (sections 6 and 10).
5. Non-status Indians with band membership (section 10)(8). They are blocked from receiving federal services for status Indians. Previously, DIAND paid for the non-status population living on reserves as well, although there was no legal obligation to do so. If large numbers of non-status Indians are accepted as band members perhaps DIAND will stop this practice (Holmes, 1987, p. 19; cf. Nielson, 1985). The result of this is that two classes of Indian persons will live on the reserve, which creates inequality. Given the fact that almost all Indian bands are very poor and need federal services, the consequence may be that bands will design membership codes in accordance with the status regulations in the new Indian Act. For that reason, NWAC argued that band control of its own membership is still controlled by the Indian Act, since bands will only allow status Indians as band members (HoC, Issue # 28, 1985, p. 63). Lack of resources may severely restrict the already limited self-governing institutions of Indian bands.

Section 11 deals with persons entitled to band membership if a band leaves control of its membership with DIAND, or does not take

8) In order not to complicate the issue further, I have deliberately left out the categories of treaty and non-treaty Indians.

control before June 28, 1987. All persons who have a right to legal status or reinstatement under the new Indian Act will become band members as well. Thus, whereas the bands may exclude certain categories of status persons, such as 6(1)d and e and 6(2), these persons can become band members (Holmes, 1987, pp. 44-45). However, if a band decides to leave control of its membership with DIAND and wishes a person to be put on the band list who is not entitled to membership under section 11, this person will be put on the band list by DIAND with the band's consent (section 12, IA, 1985).

A band may have assumed control of its band membership and decide at a later date to leave control with DIAND. Once the Department takes control, it will determine band membership on basis of section 11. However, band membership of persons without legal status who were put on the band list by the band council when it still controlled its membership will be respected by DIAND (subsection 13.3, IA, 1985).

Section 14 deals with band lists. Persons who think they are entitled to band membership either by DIAND rules or by band rules may enquire whether their names have been put on the list at respectively DIAND or the band council. If their names are not on the list, they may protest. If they are not satisfied they may appeal the decision to a court. The president of NWAC argued that Indian bands did not start sex discrimination. Therefore, she did not see how an individual can go against her band. Instead, the federal government should have restored band membership to all persons of aboriginal ancestry. Now, bands are being made responsible for sex discrimination in the past. She advised her constituency not to sue a band in the case that their names did not appear on a band list since, in the end, it was the government's fault (HoC, Issue # 28, 1985, p. 99). Her argument carefully hid NWAC's fear that women might have trouble seeking band membership once band councils are in control of their membership. However, if legislation were to compel bands to allow reinstated persons, and particularly women, on the reserves, they would probably adhere to the rules. Hence, most band councils' attitudes towards the old Indian Act revealed obedience to the law, no matter for what (hidden sex-discriminatory) reasons.

NWAC claimed that only when the federal government has restored band membership as it used to be before the existence of the Indian Act, will real Indian self-government be possible. Within

Indian self-governing institutions women will regain their rightful, equal place. 'Rightful' in this respect bears two connotations: it refers to Indian women's perceptions of their roles and positions and, secondly, it refers to sexual equality in the legal sense. Hence, once women have their band membership restored, bands cannot revoke the decision since it was dictated by federal law.

It was not solely NWAC being critical of Bill C-31, even if some of its suggestions were included. NWAC claimed that the three main goals of the new Indian Act could never be obtained because sex discrimination in law goes on, because not all persons are reinstated, and because band control of band membership does not really provide aboriginal self-government (HoC, Issue # 18, 1985, p. 30). Even the federal government realized that the new Indian Act was a controversial issue and should therefore be perceived as a temporary measure. In spite of this, the AFN was afraid that Bill C-31 would become a substitute for constitutional recognition of the aboriginal peoples' right to self-government (9). The Indian Act sections pertaining to band membership and the constitutional right to aboriginal self-government are contradictory. Nevertheless, whenever constitutional rights are discussed, the Indian Act is always involved since it continues to have a strong impact on Indian identity questions.

7.2 The 1987 First Ministers' Conference: sexual equality tabled off the constitutional agenda

Bill C-31 appears to have become a catalyst in the growing internal differences within the Native Women's Association. Among the member associations different opinions started to develop with regard to NWAC's role and position both within the constitutional process and within the implementation process with respect to the new Indian Act. This problem became apparent when the board of directors held meetings in the autumn of 1985 and the spring of 1986.

The Executive, which runs the national office, appeared in favour

9) Mary Two-Axe Early from the Mohawk reserve of Kahnawake was the first Indian person to regain Indian status and band membership on July 5 1985 (Manitoba News, 4, 4, 1985, p. 1). According to an informant, Indian Act restoration of her band membership was a blatant negation by the federal government of the band's self-government. Already before her reinstatement Mary Two-Axe Early had been accepted as a band member (interview 3/4/86)

of not seeking a separate seat at the next First Ministers' Conference since it considered NWAC's position on aboriginal self-government similar to that of the AFN, in which delegation the organization took part during the 1985 First Ministers' Conference on Aboriginal Constitutional Matters. Furthermore, the Executive was reluctant to play an active part in amending the new Indian Act. Bill C-31 should be perceived as not more than an interim measure and the focus should be on developing self-government on reserves. Despite the fact that most PTMA's agreed on the Executive's viewpoint, some of them, particularly Quebec and Alberta, did not trust the political relationship between the national office and AFN. In view of former differences on sexual equality pertaining to both the Indian Act and aboriginal rights in the Constitution Act, several PTMA's were in favour of having a separate seat at the 1987 conference. Since no consensus could be reached it was decided in January 1987, not to take a separate seat and not to push for sexual equality as an agenda item of the First Ministers' Conference. Moreover, the national office would preoccupy itself with the Indian Act implementation process while the member associations would express their respective positions on the Indian Act during hearings of the House of Commons Standing Committee on Aboriginal Affairs (10).

After the 1985 conference, the federal government started a two-track aboriginal self-government approach: the constitutional approach focusing on the entrenchment of aboriginal rights, and the community approach focusing on self-government agreements. A clear example of the latter is the Sechelt band. On February 5 1986, legislation was introduced in the House of Commons to facilitate the establishment of the Sechelt band as a self-governing legal entity. Sechelt band consists of 650 members and 33 reserves within the Sechelt peninsula of British Columbia. In October 1986, Bill C-93 was passed, meaning that the Sechelt band in the 'Indian Act' sense does not exist anymore. However, unconstitutional Indian self-government agreements such as Sechelt leave sections 5 to 14.3 intact. At all times the Indian Act applies for the purpose of defining which members of a band are 'Indians' (11).

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10) This concerns only a change of name of the former House of Commons Standing Committee on Indian Affairs and Northern Development

11) By February, 1987, 35 self-government proposals involving 130 Indian bands had been received by DIAND (Govt of Canada, 1987, p. 5)

To the AFN, the Sechelt self-government agreement was a thorn in the side. Sechelt's legal authority was similar to that of Canadian municipalities. Since the agreement was not constitutionally protected, Sechelt's self-government could be easily stopped with legislative change. According to AFN, Sechelt authority means delegated authority, whereas Indian self-government according to its perception is a third form of legal authority, equal to but different from that of the federal and provincial governments. Moreover, the organization was afraid that the Sechelt agreement could jeopardize a final agreement on the constitutional right of aboriginal self-government during the last conference.

The last First Ministers' Conference was held on March 26 and 27 1987. Sexual equality was not on the constitutional agenda and the records do not show whether aboriginal women's organizations spoke, either on the matter of sexual equality or self-government (cf. FMC, 1987)(12).

As had been the case during the last three First Ministers' Conferences on Aboriginal Constitutional Matters, among the provincial governments no agreement could be reached on how to solve the matter of self-government. The federal government suggested a compromise which was supported by six provinces. The aboriginal peoples' right to self-government would be constitutionally entrenched but this right would be contingent on future tripartite Indian, federal, and provincial agreements. For the first time, the four national aboriginal organizations that officially participated in the conference formed a united front and opposed the federal government's proposal because they perceived self-government as an unconditional right ('The Ottawa Citizen', 26/3/87). Herewith, the constitutional process on aboriginal rights came to an end. The federal government, some of the provincial governments, as well as the national aboriginal organizations were disappointed that no concrete results as to the entrenchment of the aboriginal peoples' right to self-government could be reached.

The constitutional process on aboriginal matters led to specific sexual equality guarantees pertaining to aboriginal rights (see subsection 35.4 of the Constitution Act, 1982). Notwithstanding certain unclarities, it means that sex discrimination can be no part of

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12) Sandra Lovelace, representing no aboriginal organization at this conference, presented a personal brief on the sexual equality issue pertaining to both the Indian Act and the Constitution Act. Although her brief was tabled, it was not read (FMC, 1987).

any agreement between the federal (and provincial) government and the aboriginal peoples. In spite of everything, self-government has become an issue which cannot be overlooked anymore in the political relationship between the Canadian state and the aboriginal peoples. The constitutional process on aboriginal rights as well as the new Indian Act will set the tone for future discussions on the aboriginal, and in particular, the Indian people's sociopolitical and legal positions within the Canadian constellation.

As a result of the closing of the constitutional process, and due to Bill C-31, the national aboriginal organizations' constituencies as well as their political roles changed. With respect to Inuit organizations no changes had taken place. As far as the MNC was concerned, its constituency did not change. However, the organization wanted to develop a Metis Register of recognized Historic Metis (cf. Indian Act; MNC, 1984). As a result of Bill C-31, Historic Metis were afraid that Pan Metis as well as non-status Indians, who would never be able to retain legal status, would re-identify as 'Metis'. The NCC gradually became a national representative body of non-status Indians who will never be eligible for legal recognition, as well as of reinstated Indians who have no band membership. The AFN represents status and reinstated Indians with band membership, as well as band members without Indian status. NWAC's constituency remained predominantly Indian, but it concerned to a larger degree status, reinstated, and non-status Indian women who felt a strong homeland connection and who were, or wanted to become, band members.

Within the practical context of self-government there can be no single viewpoint. Any political action has to come from Indian communities themselves now. Thus, national aboriginal organizations, including NWAC, will have to evaluate themselves and decide what their future mandates are. Individual bands are compelled to seek agreements with both the federal and provincial governments in order to develop self-governing institutions. These agreements will always be contingent on the status and reinstatement regulations, as well as on band membership rules within the Indian Act. It means that whatever form of self-government Indian bands might be able to establish in agreement with the governments, the Indian Act will always remain part of it.

Meech Lake

The aboriginal peoples' faith in the federal and provincial governments' intentions to continue discussions on self-government and to reach agreements is small, in view of their experiences in the past. All agreements and policies had always had the tenor of attempting to solve 'the Indian problem' as the colonial authorities saw fit. Therefore, the Meech Lake Accord of April 30 1987 was a severe slap in the face of aboriginal peoples.

In August 1986, negotiations between the Prime Ministers of Canada started in order to incorporate Quebec formally within the Canadian Confederation. This province had not yet signed the Constitution Act because Quebec's special status as a distinct society had not been constitutionally provided for. Since there had hardly been any media coverage, the Meech Lake Accord came as a surprise to most Canadians, including the aboriginal peoples. Meech Lake entailed the following:

1. Recognition of Quebec as a distinct society, with a distinct culture, language, religion, and legal system.
2. Restrictions on the federal government's spending power in areas of provincial jurisdiction. Federal services for Indians who live off-reserve are in the areas mentioned above.
3. Provincial veto on constitutional amendments. One province is enough to block a future constitutional entrenchment of the right to aboriginal self-government. Particularly, British Columbia, Alberta, and Saskatchewan are not favourably inclined towards aboriginal peoples' constitutional aspirations.
4. Provincial participation in appointments of the Supreme Court.
5. Constitutional entrenchment of the provincial governments' right to have a role in the immigration policy (Gibbins, 1988, pp. 5-6). The accord had to be ratified by all provinces before June 1990.

Section 16 of the Meech Lake Accord stipulates: 'Nothing (...) affects section 25 or 27 of the Canadian Charter of Rights and Freedoms, section 35 of the Constitution Act, 1982 or class 24 of section 91 of the constitution Act, 1867' (ibidem, p. 280). Nevertheless, the four national aboriginal organizations - AFN, ITC, MNC, and NCC - expressed their great concerns about the accord. Aboriginal peoples, as well as women's groups and ethnic groups, have in the last two decades fought their way into the centre of

Canadian national consciousness and political agenda. These groups feel that Meech Lake jeopardizes their current rights in the Constitution Act. They do not accept the federal government's assurance that their rights are still ensured. They fear the weakening of federal responsibility for social programmes since the provinces over the years have shown to be less receptive to their demands. Furthermore, the AFN argued that it is a wonder why the accord, with all its vagueness as to 'distinct society', was signed while most provinces have never come to accept an aboriginal self-government entrenchment in the constitution on basis of this vagueness (ibidem, pp. 153-154). All aboriginal organizations, including NWAC, argued that section 25 and 35, pertaining to the aboriginal peoples' rights, should under no circumstances be allowed to be overruled by provincial veto rights. The relationship between aboriginal peoples and the Canadian state has always been a federal government affair (cf. Erasmus, 1988, p. 183).

As far as women's rights are concerned, and particular those of aboriginal women, Mahoney (1988) is rather sceptical in her perception of the Meech Lake Accord. She is afraid that the latter may diminish the strength of constitutional rights of women. Women's rights have only been recently established in legislation. Within the Meech Lake Accord the emphasis is on cultural rights that have a much longer legal tradition than women's rights. Sex discrimination is for the most part culture based. Mahoney (1988, pp. 159-162) fears that the courts will have culture rights prevail over sexual equality rights. Should an Indian woman take her band to court because she is not allowed membership on the basis of sex-discriminatory band membership rules, the court may assume that sex discrimination is or was part of that particular Indian culture. It follows that women's rights are subordinated to culture rights. As NWAC has always argued, no matter the cultural differences and historical practices - and whether sexual inequality is authentically Indian or not - Indian women want to be equal to Indian men in law as well as in practice.

By reviewing the Bill C-31 implementation process, we can assess whether Indian women's equality has been reached on the band level by means of the new legislation. Since the constitutional process with regard to self-government failed, Bill C-31 is the only legal avenue left for Indian bands to establish limited self-government.

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

APPLICATION FOR REGISTRATION UNDER THE INDIAN ACT
DEMANDE D'INSCRIPTION EN VERTU DE LA LOI SUR LES INDIENS

CHECK ONE - VEUILLEZ COCHER

1 ☐

I request that I and my minor children if eligible be registered in the Indian Register and if applicable that our names be entered in a Band List as provided under the Indian Act as amended

Je demande que moi-même et mes enfants mineurs si éligibles soient inscrits au Registre et si approprié que nos noms soient ajoutés sur une liste de bande comme prévu dans la Loi sur les Indiens telle que modifiée

Signature _____ Date _____

2 ☐

I make this application as guardian on behalf of the applicant who is under the age of 18 years or is mentally incompetent within the meaning of the Indian Act I request that the applicant be registered in the Indian Register and if applicable that his/her name be entered in a Band List as provided under the Indian Act as amended

Je fais cette demande comme tuteur pour le requérant qui a moins de 18 ans ou est mentalement incapable tel que défini dans la Loi sur les Indiens Je demande que le requérant soit inscrit au Registre et si approprié que son nom soit ajouté sur une liste de bande comme prévu dans la Loi sur les Indiens telle que modifiée

Signature _____ Date _____

IF MORE SPACE IS REQUIRED ENTER ADDITIONAL INFORMATION ON A SEPARATE SHEET OF PAPER AND ATTACH IT TO THIS APPLICATION FORM

UTILISER AU BESOIN UNE FEUILLE SÉPARÉE POUR AJOUTER DES RENSEIGNEMENTS ADDITIONNELS ET LA JOINDRE À CETTE DEMANDE

Surname of Applicant - Nom de famille du requérant | Given Names - Prénoms

Mailing Address - Adresse

Postal Code - Code postal | Tel No - N° de tél

Date of Birth - Date de naissance (Y-A / M / D-J) | Former Band No - Ancien N° de bande | Name of Former Band - Nom de l'ancienne bande

Surname of Father - Nom de famille du père | Given Names - Prénoms

Date of Birth - Date de naissance (Y-A / M / D-J) | Band No - N° de bande | Name of Band - Nom de la bande

Maiden Name of Mother - Nom de fille de la mère | Given Names - Prénoms

Date of Birth - Date de naissance (Y-A / M / D-J) | Band No - N° de bande | Name of Band - Nom de la bande

Surname of Paternal Grandfather - Nom de famille du grand-père paternel | Given Names - Prénoms

Surname of Paternal Grandmother - Nom de famille de la grand-mère paternelle | Given Names - Prénoms

Surname of Maternal Grandfather - Nom de famille du grand-père maternel | Given Names - Prénoms

Surname of Maternal Grandmother - Nom de famille de la grand-mère maternelle | Given Names - Prénoms

Grounds for Registration - Raison pour l'inscription

If you have children please list the names and birthdates of all of them For each minor child attach a birth registration showing the names of the parents Your children who have reached the age of 18 must complete a separate application if they wish to apply for registration

Si vous avez des enfants veuillez indiquer leur nom et la date de naissance pour chacun Pour chaque enfant mineur attachez un certificat d'enregistrement de naissance indiquant les noms des parents Vos enfants qui ont atteint l'âge de 18 doivent compléter une demande d'inscription séparée s'ils désirent faire demande

List All Children - Inscrivez tous les enfants

Date of Birth - Date de naissance (Y-A / M / D-J)	Surname - Nom de famille	Given Names - Prénoms

Surname of Other Parent - Nom de famille de autre parent | Given Names - Prénoms | Date of Marriage - Date de mariage (Y-A / M / D-J)

Date of Birth - Date de naissance (Y-A / M / D-J) | Registered Indian - Indien inscrit ☐ Yes - Oui ☐ No - Non | Band No - N° de bande | Name of Band - Nom de la bande

8 THE BILL C-31 IMPLEMENTATION PROCESS: CONSEQUENCES FOR INDIAN WOMEN

> 'Most First Nations were originally matriarchies. Women decided everything about the family: health, education, and were the chiefs. In fact, women are still making decisions within the family about most things, including the future of their children. In rejecting women and children, Indian Nations are wiping out future generations of Indians. It is suicidal for Indian Nations. The exclusion of their children is the greatest insult to Indian women' (female Indian informant, cited in: Holmes, 1987, p. 11).

This chapter will focus on the Bill C-31 implementation process from June 1985, until June 1987. I will describe the problems for reinstated women and children in attempting to exercise their rights as band members or to acquire these rights. It is only since the beginning of 1987 that some consequences of Bill C-31 have been felt regarding reinstatement, control of band membership, and application for band membership. Many consequences were still not known in 1987 since only a small number of persons who applied were reinstated, of whom only a few have automatic band membership, and even less have actually returned to the reserve. Although the federal government expected the implementation of Bill C-31 to end in 1990, the process itself was officially considered closed as of June 28 1987. On that day the Minister of DIAND released an Implementation Report (cf. INAC, 1987). The year 1987 also marks the end of the period on which the study presented in this publication focused. Nevertheless, it seems likely that the Bill C-31 implementation period may easily expand right into the 21st century.

8.1 Problems concerning reinstatement and first-time registration

Whereas the old Indian Act concerned non-status Indians to a greater extent than status Indians (the latter could take it for granted) - and consequently more women than men - Bill C-31 is a matter of concern to all Indians whether they do or do not have legal status or band membership. The new Indian Act compels all those involved to

think about the implications of the Indian Act system as related to their self-government strife, future band membership codes, and the consequences of reinstatement. Questions of Indian (self) identity, legal status, band membership, and self-government are interwoven with the sexual equality matter of Indian women.

The criticism with regard to the new Indian Act, as described in the previous chapter, has not changed. However, after two years of implementation specific areas of problems became apparent. In all those areas, women experienced the most problems. 12(1)b women and their children comprise the largest category of reinstatement applicants, that is 77 per cent. Negative consequences of Bill C-31 for reinstated Indian women and their children can be largely attributed to the sex-discriminatory status regulations within the old Indian Act and their impact on gender relations on the band level.

One area of problems in the implementation of the new Indian Act involves the application for reinstatement at DIAND. In order to fill in the application forms adequately, persons need to have them accompanied by official documents, mostly birth and marriage certificates of themselves, their parents, and sometimes even of their grandparents. Indian records are maintained either by churches or the federal government. Over the years many records have been lost or destroyed, or appear to be incorrect (HoC, 1988b, p. 17).

What the available records reveal may sometimes be a painful experience for applicants. For instance, the case may be that a person's mother had more children than was known or that the applicant's father appears not to be the biological father. Another problem occurs when applicants find out they were adopted. In this case it is very difficult to obtain the necessary documents since it is unlikely that the biological parents' names will be revealed by adoption institutions. If applicants cannot bring the necessary evidence (records), they are not told what information is valued as alternative evidence. Persons may get frustrated and give up. DIAND will render their applications incomplete. Because no official decision is made on their application, they cannot protest (HoC, 1988b, p.19).

As far as government records of Indian persons are concerned, there is a problem as well. The fact that more persons applied for reinstatement than was estimated by DIAND indicates that the department has an inadequate method of registration, particularly as concerns non-status Indians. Estimates by DIAND of the status Indian population in Canada have always been lower than those reported in census data (cf. Larocque and Gauvin, 1989).

That the number of applicants was by far greater than expected is also an indication of the role that NWAC and other aboriginal organizations played in the implementation process (see Table 8.1). Particularly NWAC made serious efforts to inform people about Bill C-31 and to stimulate awareness of their reinstatement applicability (1).

There are also problems with the interpretation of Bill C-31 as concerns reinstatement applicability. As was pointed out by reinstatement officers of DIAND, subsections 6(3) (status entitlement) and 11(3) (band membership entitlement according to DIAND) can be read as if an applicant is not entitled to status if both parents died before April 17 1985, and not entitled to band membership if both parents died before June 28 1987. This is referred to as the 'death rule'. Because of this technically legal problem, in August, 1987, DIAND put a moratorium on all applications where both parents were dead at the indicated dates (HoC, 1988b, pp. 37-38). The so-called 'death rule applicants' do not know what will happen to their application (2).

Even persons who are reinstated have problems. First, persons do not know what entitlements are connected with reinstatement. DIAND only sends them a letter of confirmation (see Enclosure 8.1). Secondly, they do not know as of what date they are entitled to the status benefits: is it the date they applied; the date DIAND received their application; is it April 17 1985; or is it the date that they are informed of their reinstatement (HoC, 1988b, p. 41)?

Another problem related to application for reinstatement concerns the question of band affiliation. Official band affiliation is in some cases different from real band affiliation. When persons have to apply for band membership they may be confused: do they have to apply where they were born; where most of their relatives live; or elsewhere? For example, one informant and her husband came from different bands and had lived on yet another reserve for a long period of time before they moved to a city. Also, sex discrimination prevails with respect to automatic band membership. Status women who married a status man from another band cannot be reinstated as

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1) By May 17 1988, over 101,000 persons had applied for reinstatement At that time only 52.4% of the applications were completed, of which 74% resulted in new registration (HoC, 1988b, pp 12-13).

2) In September 1989, the Indian Act was amended to solve this matter (see Appendix 2, subsections 11(3)a and b)

Table 8.1

(copied from: Chabot, 1987, p. 13)

REGISTRATIONS UNDER SECTION 6 OF THE AMENDED INDIAN ACT
BY REGION - AS OF JUNE 30, 1987

REGION	TOTAL APPLICANTS	6(1)(a)	6(1)(b)	6(1)(c)	6(1)(d)	6(1)(e)	6(1)(f)	6 (2)	TOTAL REGISTERED	TOTAL DISALLOWED
ATLANTIC	3401	33	0	401	28	1	29	871	1363	154
QUEBEC	10113	60	0	1057	36	0	125	2339	3617	568
ONTARIO	27511	139	0	2372	531	11	429	4028	7510	1018
MANITOBA	10798	31	0	1041	210	4	173	1525	2984	351
SASKATCHEWAN	8978	34	0	941	135	1	80	1510	2701	280
ALBERTA	11357	51	0	1061	120	4	79	1666	2981	561
B C	17268	60	0	1711	290	0	298	2304	4671	313
YUKON	2127	16	0	262	48	0	39	495	860	103
N W T	1743	2	0	127	22	0	6	140	297	50
CANADA	156	0	0	0	0	0	0	2	2	0
TOTAL	93452	426	0	8973	1420	29	1258	14880	26986	3398

Source: Department of Indian and Northern Affairs, Extracted from "Reinstatement of Status - S-3 - Individual Entitlements - 87.06.30"

members of the band of their birth. Furthermore, it appears that women are automatically reinstated as members of the band of their (former) husband instead of their own (HoC, 1988b, p. 35).

Not only the application for reinstatement and the reinstatement procedures are areas with many problems. The Reinstatement Unit of DIAND itself appears to cause problems. Initially, the majority of the staff were of Indian ancestry. When the toll-free telephone number was just opened, people called to ask in disbelief whether it was true that they might be able to retain their legal status and band membership. Everybody, including the staff of the Reinstatement Unit, was excited. In the beginning, the staff sometimes received presents from persons who were reinstated. However, when applications began to come in in large numbers and the staff could not deal with them anymore as they had been used to, the processing of applications began to slow down, involving endless waits for some applicants. Already four months after Bill C-31 had been passed in Parliament, NWAC had warned the Minister of DIAND that the situation at the Unit was a 'mess' ('Toronto Star', 1/11/85). By that time, only 1,400 persons had been reinstated. The Minister admitted that DIAND had not prepared itself to deal with the wave of applications. Although the reinstatement staff grew from 7 to 38 persons, the problems accumulated. Ever since the Implementation Report was released in June 1987, numbers of decisions on reinstatement had dropped per quarter (3). Apart from this, the size of the Reinstatement Unit had been reduced, particularly by firing native staff, and there were higher numbers of rejections to reinstatement which cannot merely be attributed to applications by persons not entitled to reinstatement. Furthermore, inequity in the processing of applications was rising. At the beginning, old persons and those in urgent economic need were helped first (4). Other applications were dealt with on a 'first come, first serve' basis. Gradually this policy changed; the least difficult applications were dealt with first (HoC, Issue # 33, 1988a, pp. 7-10). Since 12(1)b women and their children are the largest group applying for reinstatement and first-time registration respectively, they are at the greatest disadvantage with respect to an inefficiently and inadequately working Reinstatement Unit.

As a result of the delays, a person may not be reinstated before

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3) The number of reinstatement rejections rose from 9% in 1985 to 20% in the last quarter of 1987 (HoC, Issue # 33, 1988a, pp 7-8)

4) The reason for having old people on the priority list was that they were in need of medical assistance to a greater extent than other status and reinstated Indians Moreover, reinstatement made it possible for many old people to be buried on their reserve

the band is in the process of developing its own membership codes. It is not known whether bands that have control of their membership before a person is reinstated will be able to disallow membership to such a person (Holmes, 1987, p. 31). Since the Indian Act is rather specific in protecting acquired rights, I assume that this is illegal. However, bands may design other rules which prevent a reinstated person from exercising his or her membership rights. In their by-law-making power bands may stipulate that only band members who reside on the reserve have voting rights. Furthermore, they may state that an automatically reinstated woman, and her family, cannot live on the reserve due to a housing shortage.

8.2 Problems concerning band membership rights

The area in which the most serious problems occur for reinstated women and children concerns band membership. By the end of the implementation process, some 275 bands had sent their membership rules to DIAND but only a handful of bands had their own codes in place before the deadline, June 28 1987 (5). Thus, all other Indian bands in Canada were assumed to have (temporarily) left control of their membership with DIAND. Through section 11 of the new Indian Act status, or reinstatement, and band membership are connected again. So, one may presume that there are no more limitations to reinstated women and their children returning to the reserve. Where bands have their own membership codes in place there can be no obstacles either, because the rules have been screened by DIAND not to violate sexual equality rights. Nevertheless, in practice we see quite another picture developing. Band codes do not have to be published, may be changed at a later date, and for an individual it is difficult to assess whether the codes are not in accordance with the law. Furthermore, band elections may be organized in such a way as to prevent off-reserve band members

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5) There were 16 bands in control of their membership by June 28, 1987 Saulteau and Sechelt in B C, Champagne and Aishihik in Yukon, Cumberland House in Saskatchewan, Wapekeka, Big Island and Chippewas of Georgina Island of Ontario, and, Sawridge, Lubicon Lake, Swan River, Tallcree, Ermineskin, Horse Lake, Driftpile and Fort McMurray of Alberta. Three bands in Nova Scotia decided to leave band membership control with DIAND (Chabot, 1987, p 14, INAC, 1987, p 14) With Bill C-31 it is the case that not only bands are requesting control of their membership There are bands requesting Indian Act recognition as a band As long as nothing else is politically agreed upon, Indian Act recognition is the only way to survive corporately as Indians

from knowing. Bands are allowed to make residency by-laws in which they can integrate loopholes which prevent reinstated persons and their families from living on the reserve (Chabot, 1987, p. 17). This has led the House of Commons Standing Committee on Aboriginal Affairs to recommend that band codes as well as by-laws should continuously be consistent with Charter rights (HoC, 1988b, p. 85).

As of July 1987, DIAND had received 160 protests from bands. There were protests concerning the limited time frame for bands to establish their own membership codes. While the federal government had left the old Indian Act intact for more than a century, Indian bands were compelled to correct the old system within two years. Most protests appear to result from a band's disagreement with the inclusion of an individual's name - mostly that of a woman - on the band membership list (Chabot, 1987, p. 14). Unfortunately, there are no names released of bands that have protested against the automatic restoration of band membership, particularly of former 12(1)b women. As was the case during the 1970s, bands are divided on the issue of automatic restoration of band membership of reinstated women. The reasoning behind the pros and cons appear to be diverse; from cultural, political and strategical, to economical and practical. Some of those reasons are a device in order to cover sex-discriminatory practices on the band level. For instance, some bands were afraid that the white husbands of reinstated Indian women would take over band politics. This may imply recognition of a male-dominated system within society at large that does not necessarily exist within Indian communities. However, white women on reserves have not been felt as a threat. This may refer to an existing male-dominated system on the Indian band level as well.

Some bands welcome the return of former 12(1)b women and their families and they do not blame women for their mixed marriages. A chief from a Cree band in Quebec explained to me: 'In order to survive as Indians, we need more human resources' (interview 4/8/87). Some bands do welcome reinstated persons and their families since it is felt that these people have more educational and career experiences. Therefore, they may significantly contribute to the socioeconomic development of Indian communities. Another chief from a Tribal Council in Manitoba stated:

> 'We (our bands) were one of the first to use the Option Clause. Since 1969, we have been arguing that our women are

treated unfair. However, most bands in Manitoba have not installed their own membership codes just because they are against reinstated persons' (interview 6/8/87).

To some bands, practical and economical reasons for denying reinstated persons access to their reserves really have a much higher weight than any argument leading in the direction of sex discrimination. Bands that are very poor fear the financial impact of the influx of reinstated persons. Even if the overall majority of reinstated persons does not intend to return to the reserve, they themselves may want to return in the future or their children might have the intention. Bands want to be ready for this but the federal government is extremely vague in terms of enlarging bands' resources, including their land base. Indian Affairs spent nearly 30 million dollars on programmes and services for the implementation of the new Indian Act (6). This figure, compared with the number of reinstated persons by June 28 1987, leads to merely one thousand dollars spending power per person. Of course, this is hardly enough to ensure a reinstated person a new start on the reserve.

To illustrate the above, a chief from a Cree band in Manitoba felt he was compelled to turn reinstated persons down for the reason that there was already 70 per cent unemployment on the reserve. 600 reinstated persons - that is 35 per cent of the existing band membership - had requested band membership. Once a person has band membership he or she is entitled to live on the reserve. Moreover, the president of the Union of Ontario Indians stated that in his province many bands were turning women away in order to prevent conflicts between newcomers and long-time residents over economic issues. Until there is a legitimate form of negotiation on the impact of the movement of band funds, housing and other amenities, reinstated women will have trouble in returning to the reserve despite their automatic band membership (Women Spirit, 1, 7, 1987, p. 1).

The Coalition of First Nations (CFN) - representing some 120,000 status Indians, primarily in western Canada - mentioned political reasons for rejecting automatic band membership of primarily reinstated 12(1)b women. Since its establishment in 1983, the

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6) The amount was divided among several federal services areas, such as: education, social assistance, welfare, economic development, housing, administration, community capital facilities, and band management (INAC, 1987, p. 19).

organization has always maintained the position that the Indian Act is illegal. The Royal Proclamation of 1763 and the treaties are the only viable legal documents. According to the CFN, the federal government was only allowed to use the status system within the Indian Act for the purpose of paying treaty money (7). Furthermore, the CFN argues that the sections pertaining to band membership (sections 10 to 14.3) are in violation of the international right to self-determination (HoC, Issue # 17, 1985, pp. 5-6, pp. 25-26). The CFN considers itself bound to international human rights standards, including those related to discrimination on the basis of sex. Nevertheless, the CFN planned to deny reinstated women access to the bands (Davies, 1985b, pp. 1-2). Hence, former 12(1)b Indian women were made victims for the sake of a political conflict that was largely played over their heads. Several women of the CFN claimed that Indian women who stayed on the reserve and married men of their own band or nation had done so to protect the treaty rights for future generations (HoC, Issue # 21, 1985, p. 8). Intermarriage or mixed marriage was perceived as wrong. However, no such judgements were made in the direction of men who had married either white women or Indian women from other bands or nations.

As mentioned before, the AFN had argued that band membership rules and proceedings as set out in sections 10 to 14.3 of the Indian Act are in violation of the Indian people's right to self-government. It specifically opposed the placing of persons on band lists by DIAND (automatic band membership). The fact that this for the most part concerned women who had become victims of previous regulations was of no concern (HoC, 1988b, p.48). In a letter from the AFN to the Minister of DIAND of November 18 1986, the organization asserted that Indian Act reform through the status and band membership regulations in Bill C-31 must not be made at the expense of Indian self-government.

In view of the general Indian people's perception that real Indians are status Indians, it is likely that once there is self-government most Indian governments will only allow status Indians, in accordance with the old Indian Act regulations, to become citizens. It appears that established band membership codes hardly leave room to accept

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7) This is another indication of the belief of some Indian people that treaty rights are connected to the status regulations within the Indian Act. They fear that without Indian status the treaties would be lost.

any new band members. For instance, since a 6(2) child of a reinstated 12(1)b woman may not be able to transmit status to future generations, bands tend not to give 6(2) persons band membership. Furthermore, there appears not to be a trend at all to include non-status persons as band members. The Native Women's Association foresaw the women's problems within future Indian self-government. Therefore, it continuously argued that reinstatement and automatic band membership should go hand in hand in all cases. Only after every person of Indian ancestry has his or her cultural heritage legally established can Indians start to discuss among themselves what self-government means to them. Bill C-31, according to NWAC, was only a necessary interim measure to correct wrongs from the past.

As a result of the many statements from informants, media coverage, as well as inside information from aboriginal organizations, I have come to the conclusion that particularly the most southern bands in Alberta are hostile towards the return of reinstated women and their children. An article in the Edmonton Journal of January 16 1986, refers specifically to this problem. The Frog Lake band council did not allow a reinstated Indian woman to attend a meeting in which future band membership was discussed. Her legal status and band membership was not recognized by the band. According to the band council, only persons who were actually residing on the reserve were allowed to vote. The band council did not recognize the fact that this former 12(1)b woman had previously not been allowed to live on the reserve through no fault of her own.

The Alberta bands in southern Alberta persist in their negative attitude towards reinstated 12(1)b women despite the fact that only a few of them have indicated the wish to actually return to the reserve. The overall majority are interested in legal status and band membership for the sake of their children. The latter were never entitled to legal recognition of their Indian identity until Bill C-31 was enacted. Their mothers would like them to have band membership as well. As one of my informants stated: 'It doesn't mean much to be a status Indian with no band affiliation. It leaves you nowhere as far as your Indian identity is concerned' (interview 31/1/86). Everywhere in Canada, the number of persons who want band membership is far larger than the number that actually wish to return to the reserve. According to the Bill C-31 Implementation Report, only 16.2% of automatically reinstated persons expressed the wish to live on a reserve (INAC, 1987, pp. 9-10, 'INAC

Communique', 26/6/87). Band membership symbolizes a cultural link with family members who live on the reserve and with the Indian community as a whole. Again, the overall theme is the homeland concept (cf. HoC, 1988b, p. 79).

Various reasons are stated to explain the bands' hostility towards reinstated women and their children. Some well-to-do southern Alberta bands argue that these women are only interested in their Indian identity in order to obtain a share of the band's wealth (interviews 5/11/85; 21/1/86; and, 23/1/86). This argument may be turned around just the same. Rich bands no not want to share the wealth among a larger membership (8).

As another informant explained to me, most bands in Alberta were traditionally small, geographically-isolated and did not have institutionalized political leadership. These bands adopted the old Indian Act as their authentic sociopolitical system of organization. Indian Act chiefs and band councillors perceive themselves, and are recognized by their band members, as traditional leaders. Furthermore, several bands accepted the status regulations in the old Indian Act since they were perceived to be in agreement with their traditional patrilineal and patrilocal social organization pattern (interview 17/8/90). As a female informant explained to me: 'When you marry out, you're out' (interview 7/8/87). Hence, the new Indian Act was perceived by them as a violation of their traditional culture. This may be a viable explanation of all those bands who are not rich and still deny reinstated women access to the reserve. However, it also hides the practice of sex discrimination against women who live on the reserve.

The federal government anticipated conflicts between the Indian Act regulations, the Charter rights, and the self-government strife of Indian bands and nations, and had therefore established Test Court Case funding. However, none of the 40 cases that were submitted and supported went to the Supreme Court (cf. CCSD, 1985)(9). Most cases involve the applicability of federal and provincial laws on reserves, family law, and constitutional rights (hunting, fishing and trapping rights). There is only one case (although merely indirectly)

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8) One has to keep in mind that four bands in Alberta are rich, holding 85% of the total Indian capital funds in Canada

9) The fact that since the 1980s more and more Indian people have started court action may be conceived as an indication of their growing self-awareness, and as a reaffirmation of their desire to control their own affairs

dealing with sexual equality as related to the new Indian Act, as well as to aboriginal rights within the Constitution Act. The fact that there has not so far been a legal case specifically dealing with Indian women - despite the many problems in this area - may be attributed to the following considerations. In spite of the financial aid by both DIAND and the Canadian Council for Social Development, women tend to view the equality rights within section 15 as non-Indian rights. To start court action against their own bands on the grounds of this Charter right is conceived to be a contradiction. Women cannot hold the federal government responsible in court for the consequences of the old Indian Act, and for residual sex discrimination in Bill C-31. Within the new Indian Act there is a provision that there can be no liability against the federal government as a result of the Indian women's loss of status and band membership in accordance with the old Indian Act. If women want to go to court, they have to sue their own bands. According to Holmes: 'Generally speaking, individual women are reluctant to protest openly or call upon the courts to uphold their rights. Reserve communities are small, closely connected networks of families and kin groups. There is no way a woman and her children can force their way into the community; they must be willingly accepted or they will have no quality of life' (1987, p. 34). The fact that reinstated 12(1)b women anticipated problems with their bands when they claimed their band membership rights may have prevented some women from actually returning to the reserve.

The only legal case dealing with the sexual equality issue indirectly is the Walter Twinn case. Walter Twinn is chief of the Sawridge band in Alberta, reputedly the wealthiest band in Canada. The Sawridge band council had passed a residency by-law to prevent reinstated persons who obtained automatic band membership, mostly women, from returning to the reserve. Within the Twinn case, six bands from Alberta are involved: Sawridge, Sarcee, Enoch, Blackfoot, Ermineskin and Sturgeon Lake. The bands argued in court that sections 8 to 14.3 of the Indian Act (referring to band membership) violate aboriginal rights within section 35 of the Constitution Act. To deny (status) Indians veto right to band membership applications and to impose reinstated band members is also considered in violation of section 2(a) of the Charter. The latter refers to the right to associate freely with other individuals. In this

legal case sexual equality is put against self-government (10). The Twinn case will be heard before the Federal Court of Appeals. NCC and the Alberta IRIW have received Test Court Case funding from DIAND (11). At the time when this publication was released, no hearing date was scheduled.

As we have seen, Bill C-31 profoundly changed the old Indian Act. Although blatant discrimination against women has been removed, the effects of that discrimination persist which becomes apparent when reinstated 12(1)b women and their children want to exercise their rights as band members, or pursue the acquisition of these rights. As Holmes states:

> 'Women who lost status are divided against brothers, fathers, and even mothers and sisters who oppose the return home of reinstated women. Brothers and sisters who have married-out continue to have unequal ability to pass on status to their descendants. Cousins, and even children in the same family, have different rights to status and band membership. All of these inequalities contribute to strife and division in families and communities, the results of which can be devastating to adults and children alike' (1987, p. 37).

Reinstated women were in particular critical of Bill C-31 because of the problems they and their children, were confronted with at the band level. While the right of bands to control their membership is generally supported as one step forward in the process toward Indian self-government, women and children suffer the most. Women disapprove of the bands' neglect of their situation. The motherhood concept plays a role in their argument. Many informants claimed that their role as mothers is vital to the continuation of Indian cultures. There are still no adequate legal guarantees to abolish sex discrimination of Indian women. The sexual equality guarantee in the Charter is problematic for Indian women to use. Furthermore, the sexual equality provision related to aboriginal rights has no real

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10) These six bands had relatively high, and in some cases extremely high, numbers of reinstated persons who applied for band membership. If they were to be honoured, the population would increase as follows: Sturgeon Lake, 81.1%; Sarcee, 21.5%; Sawridge, 1800%; Blackfoot, 10%; Ermineskin, 22.6%; and, Enoch 29.9% (cf. INAC, Appendix B, 1987).

11) Cf. Chabot, 1987, pp. 6-7; Duclos, 1990, p. 366; Holmes, 1987, p. 21; 'News North', 18/7/86.

worth as long as aboriginal rights are not defined and constitutionally entrenched. And lastly, despite the automatic band membership provisions within the Indian Act, women are prevented from exercising their rights because their children have only a conditional right to band membership and may not be able to obtain it, and band councils can make residency by-laws that discriminate against reinstated persons. As an informant put it: 'Bill C-31 is politically a masterpiece, in reality it is a nightmare' (interview 5/4/86).

NWAC's fight for sexual equality within the legal framework of the Canadian constellation came to an end in 1987. Ever since its establishment it has always remained faithful to its overall claim that all persons of aboriginal ancestry, whether with or without legal status, whether on or off-reserve, are members of Indian nations and should have the same rights (cf. NWAC, 1988, p. 125). As of 1987, the struggle against residual sex discrimination is left with NWAC's regional member associations and with the grass roots at the band level. Inhowfar the strategic use of the ideological concept of traditional motherhood has contributed to the changing of attitudes towards women within Indian communities, it is in fact too early to assess. Therefore, sequel research within the next fifty years is a prerequisite.

Enclosure 8.1 INAC - Letter confirming registration as an Indian

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

Your file / Votre référence

Our file / Notre référence

Dear Mrs. H

I am pleased to confirm that you are now registered as an Indian in the Indian Register maintained in this Department and that you are also registered as a member of the Kitamaat Band.

In reference to the registration of your son H H , please be advised that I will require a copy of his long form birth registration on which the names of his parents are indicated before I can proceed with his registration. If H was born in the province of British Columbia, this document may be obtained by writing to:

Mr. A.H. Herson
Director,
Vital Statistics Division
Department of Health
1515 Blanchard Street
Victoria, B.C.
V8W 3C8

The fee for this document is $10.00. Please quote our file number when you send this document to us.

I trust I have been of some assistance.

Yours sincerely,

L.G. Smith
Registrar
Ottawa, Ontario
K1A 0H4

c.c. Regional Director
Medical Services Branch
Health and Welfare
Suite 500
303 Main Street
Winnipeg, Manitoba
R3C 0H4

Canada

CONCLUSIONS: SEXUAL EQUALITY AS AN ABORIGINAL RIGHT

> 'In a long-term perspective, however, the forms of resistance adopted by colonized women correspond with the interests of colonized men, whose advantage over women was only relative to their own oppression' (Etienne & Leacock, 1980, p. 22).

In the previous chapters I have attempted to procure a deeper anthropological understanding of sociocultural and political processes in which Canada's aboriginal peoples are involved today. This study is an exploration of the historical and political relationship between aboriginal peoples and Canadian society, in which context recent aboriginal rights claims are formulated. To aboriginal peoples - being colonized peoples - the law has a specific impact on their daily life experiences. This holds particularly true for the Indians. The Indian Act controlled their lives in every aspect from the 'cradle to the grave' and even defined Indian identity. On the basis of their special legal status, the Indians - and later the Inuit and Metis through constitutional recognition - were able to make political claims. Therefore, it is no wonder that, when Indian people want changes, they cannot but think in terms of law.

The Constitution Act of 1982 and the accompanying constitutional process on aboriginal matters provided a significantly new context in which aboriginal peoples in general, and Indian people in particular, could express their concerns. The leading question in this anthropological study was: how did aboriginal women in Canada organize and what strategies did they use to pursue their political goals within the constitutional process towards defining aboriginal rights?

The Native Women's Association of Canada (NWAC) started off as a national representative body of Indian, Inuit, and Metis women, established in 1974. Its mandate was specifically to address women's issues, since it was felt by most aboriginal women that already-existing national aboriginal organizations were male dominated. This was reflected in their leadership, in their decision-making processes, and in their political mandates. NWAC was established as a result of growing awareness among aboriginal peoples which was largely founded on two global movements since the 1960s; the human rights movement as it concerns minorities, and the women's movement.

Indian women comprised the largest category of aboriginal women and it appeared that sex discrimination within the Indian Act formed the largest impetus on the establishment of a native women's organization. Therefore, it can be no surprise that the Native Women's Association proved to be primarily an Indian women's organization, reflecting the political goals of both status and non-status Indian women rather than those of all aboriginal women. In spite of this, NWAC's political plea was strongly supported by both Inuit and Metis women and their respective organizations. Several informants, whether they were members of the association or not, argued that NWAC, as a separate women's organization, and given its exclusive political mandate, would probably never have existed without the sex-discriminatory status regulations in the Indian Act and their consequences. In contrast to Indian men, women who married not officially recognized Indian, or other men were deprived of their Indian legal identity and according rights. Ever since its inception NWAC demanded changes to the Indian Act. During the 1970s its motto was 'Indian rights for Indian women'.

Within the Constitution Act of 1982 all national aboriginal organizations, including NWAC, wanted to have self-government entrenched as the most significant, and all-encompassing aboriginal right. Self-government refers to the right of a people to determine their own lives in every aspect. Sections 25 and 35 of the Constitution Act were important for the Native Women's Association because they provided a context in which to change a situation that aboriginal women perceived as principally wrong, that is, inequality between the sexes, and more specifically, legal sex discrimination against Indian women. NWAC was unique in its claim that the principle of sexual equality had to unambiguously and constitutionally stand above and touch all aspects of aboriginal rights. To put it in other words, sexual equality should govern Indian self-government without exception or derogation. The difference in the ranking of political priorities between NWAC and particularly its male counterpart, the AFN, can be largely attributed to the development of the Indian Act, and the inherent sex-discriminatory status regulations. As a result of this, Indian women were dually discriminated against on grounds of both their sex and race. The Indian Act also proved to be a catalyst in gender inequality between Indian men and women at the community level. The Indian Act held inherent (European) notions of male dominance. Inequality between Indian men and women created conflicts of interest between the

sexes which generated into conflicts over control of valuable resources, such as political decision-making power. Indian women perceived a constitutional sexual equality provision as a significant social control mechanism. It was hoped that the legal imposition of equality eventually might change attitudes of Indian men towards Indian women at the community level.

The constitutional process on aboriginal matters from 1982 to 1987 revealed how the issues of Indian (self) identity, legal status, band membership, and self-government were interwoven with the sexual equality matter. Although the Indian Act and the Constitution Act are legal issues of a different kind, the fate of Indian women cannot be adequately comprehended when these legal systems were dealt with separately.

Anthropological theories on ethnicity were helpful in uncovering the status regulations within the Indian Act as aspects of Indian self-identity. It appeared that Indian ethnic identity is an ambiguous identity because legal and cultural identity are not always in agreement with one another. Particularly in a political context - with which I have been primarily dealing - Indian people themselves have replaced to a large extent cultural identity by legal identity. Many Indian women (and children) have become victims of the sex discriminatory status regulations. Because of their lack of legal status, their 'true' Indian identity was often questioned by Indian people. Just as for example, language, religion, and homeland, Indian legal status was eventually perceived as a primordial given. Conflicts between NWAC and its male counterpart, the AFN, were centered on different conceptions of Indian identity. Whereas the latter focused on legal identity, NWAC focused on cultural self-identification. The traditional motherhood concept, as used by NWAC, outlined the non-status Indian women's incorporation within their (cultural) communities. This exploratory anthropological study may serve as a case for elaborating ethnicity theories, and in particular those that deal with the symbolic character of ethnicity. NWAC's struggle for sexual equality, its use of the traditional motherhood concept, and the changing of its motto into 'sexual equality is an aboriginal right', was not merely due to the different context of ethnic relations between aboriginal peoples and Canadian society. It is also an indication of changing power relations within ethnic groups themselves. By relating to internal gender relations within an ethnic group, this study may contribute to a further deepening into the analysis of the ethnicity phenomenon.

The most important question is how NWAC, given its exclusive mandate and exclusion from formal discussions on aboriginal rights, did try to reach its political goals. The traditional motherhood concept, as an ideological concept, was used strategically by NWAC during the constitutional process on aboriginal matters. Traditional motherhood and restoration of Indian women's traditional roles and positions within self-government were dominant arguments in NWAC's lobbying activities and position papers. This concept became a key concept because it entailed a variety of significant functional mechanisms. Since aboriginal peoples, men as well as women, agreed upon the traditional motherhood concept, it served to stimulate group cohesiveness among aboriginal peoples. The concept outvoted cultural differences among Indian bands and nations. It also assured NWAC of the support from Inuit and Metis women. This was important since the association was still perceived as an aboriginal women's, and not exclusively Indian women's, political body. Furthermore, the traditional motherhood concept reflected how aboriginal, and particularly Indian, women see themselves and would like to be seen by Canadian society, as well as by their own societies. The concept spelled out how women see their future roles and positions within self-government; it gives direction to the Indian women's place within future self-government structures.

Traditional motherhood as an ideological concept reconciles the apparent contradiction between claiming the right to self-government, and at the same time requesting legal guarantees from the Canadian state that sexual equality cannot be overruled by self-government. Aboriginal women's sexual equality is integrated within perceptions of traditional aboriginal cultures. Without restoration of traditions, there can be no self-government. Therefore, the concept makes aboriginal peoples understand what the aboriginal women's issue is about.

As far as the political relation with Canadian society is concerned, the traditional motherhood concept served to integrate aboriginal women's issues within aboriginal issues in general. The concept underlined the aboriginal peoples' opposition ideology by indicating that sexual inequality within aboriginal contemporary societies is the result of colonial policies. Furthermore, a disassociation between aboriginal women and the women's movement in general could be created. This was necessary, since the 1970s had proved that aboriginal men did not understand women fighting for their own rights. Therefore, NWAC and the AFN frequently collided over

women's issues. Since NWAC could not officially participate in the First Ministers' Conferences, it needed the support for its political claims from the AFN. Hence, by using the traditional motherhood concept, NWAC could legitimize its political position towards Canadian society at large, towards aboriginal peoples and their national organizations, as well as to its own constituency. This way, the concept was a mobilizing force as well.

Within the constitutional process on aboriginal matters, NWAC's strategy was more directed towards aboriginal peoples than to the provincial and federal governments. NWAC hoped that with the help of sexual equality guarantees in law, the Indian people's perceptions of women, and their attitudes towards them, might change. NWAC was aware that legal sexual equality provisions for aboriginal women would be established. The federal government was nationally as well as internationally held to amend sex-discriminatory regulations. Besides, the women's movement in Canada, which supported Indian women's struggles, was a strong lobbying force and federal and provincial politicians could not afford conflicts.

Despite NWAC not being a formal participant at the First Ministers' Conferences, it was able to play a role. Firstly, the women's organization strongly lobbied to have sexual equality on the constitutional agenda. Secondly, it participated in other official delegations, such as those of the NCC and the AFN, and several provinces. In the end, sexual equality for Indian women has been established in the amended Indian Act. Sexual equality for all aboriginal women is entrenched within the aboriginal rights provision of the Constitution Act of 1982. Lastly, NWAC managed to improve relations with the AFN.

A last significant question posed was: inhowfar has NWAC's strategy been successful in altering gender relations at the Indian band level? This led us to Bill C-31 and the problems of reinstated Indian women and their children in pursuing the exercise of their band membership rights, or the acquisition of these rights. The number of protests from bands against the imposition of band members, as well as the Twinn case, may be conceived as an indication of unchanged attitudes towards women despite significant legal changes. However, they may just as well not be so, since one can never be sure whether these protests against government's interference in Indian affairs are concerned with self-government only, or whether they are founded on reasons concerning sex discrimination. The issues of reinstatement and band control of its

membership within the new Indian Act, Bill C-31, remain controversial because of the great impact of the old Indian Act on the Indian people's self-identity and community awareness in connection to the sex-discriminatory status regulations.

Discussions on Indian self-government will continue. To bands generally, the old as well as the new Indian Act is perceived as a government's exercise to retain power and to set the parameters of Indian self-control. From this viewpoint, bands simply do not care that in the old Indian Act women were the victims and that the new Indian Act is more or less gender-neutral. It is not relevant to the issue of true Indian self-government. The issue of sexual equality is beside the point. The interwoveness of the Indian self-government and sexual equality issue, due to Bill C-31, makes the Indian women's position difficult. Nevertheless, if the new Indian Act eventually results in changing attitudes towards women at the band level, NWAC's primary political goal will have been achieved. Yet, it is too early to tell. A lot of work still needs to be done, but now it is up to the women in the communities to fight against sex-discriminatory practices by their own people and to seek the positions they perceive as rightfully theirs.

NWAC is a manifestation of a Fourth World women's movement. This anthropological exploratory study may draw attention to the necessity of comprehending such women's movements in particular within their own national (colonial), political and historical contexts. As has been exemplified in this study, the case of NWAC has shown the aboriginal women's movement in Canada to be significantly affected by the Canadian women's movement at large, but at the same time it also shows the unique character of this Fourth World women's movement.

> 'The problems associated with discriminatory clauses contained in the old Indian Act still exist. Once people learned to accept the government's term of status and non-status Indians, the problems of discrimination began. This was, and continues to be, a social dilemma not only for Bill C-31 natives, but for the entire native community as well. Because the old legislation divided our people, everyone lost something in the process. What we all lost was equality, the ability to treat each other as equals and, therefore, the ability to work together cooperatively to ease our transition into modern multicultural society' (Indian man, cited in: NWAC/NCC/AFN, 1990, p. 32).

> 'The brunt of the impacts has been on native women and has affected deeply and thoroughly native families and native communities. Just as the divorce statistics do not reflect the pain of a marriage break down, so too statistics on the impact of Bill C-31 do not reflect the pain of acceptance' (ONWA representative, cited in: NWAC/NCC/AFN, 1990, p. 27).

This study can only shed limited light on the impacts of Bill C-31 as it pertains particularly to aboriginal women. The research was conducted in 1985 and 1986. At that time, the effects of the new Indian Act were not felt yet. Nevertheless, in this epilogue, I try to provide the reader with an update until July, 1990.

Update, 1987-1990

Bill C-31 seems as controversial now as when it was introduced. Since the 1987 report of Indian Affairs on the new Indian Act had not adequately dealt with the (future) impacts of the bill on Indian persons as well as on Indian communities, a new implementation report was promised. In August 1988, the House of Commons Standing Committee on Aboriginal Affairs and Northern Development reviewed the implementation of Bill C-31 in its fifth report to Parliament (cf. HoC, 1988b). The Minister of Indian Affairs and Northern Development responded by promising a comprehensive assessment of the impacts of the bill in 1990, in conjunction with

national aboriginal organizations whose constituencies were affected by the new Indian Act, being NWAC, the NCC, and AFN. Five reports, including a summary report, were released by Indian Affairs in the autumn of 1990. They do not contain recommendations but had the purpose of establishing a reliable information base for both governments and aboriginal people.

By June 1990, 75,761 applications for Bill C-31 registration had been received, representing 133,134 persons. So far, 73,554 persons have been registered. Bill C-31 registrants comprise 15% of the 478,355 status Indian persons in Canada. Women represent 58% of all those who gained status, and 77% of their applications concern restoration of legal status. Hence, nearly 32,500 women regained status which they had lost as a result of the sex-discriminatory provisions in the old Indian Act, and particularly referring to section 12(1)b (INAC, 1990, p. ii, p. 13). These women were all over 25 years of age. Persons over 25 years reported personal identity, cultural sense of belonging, correction of injustice and aboriginal rights as the most important reasons for seeking Bill C-31 registration. Persons under the age of 25 years are mostly first-time registrants. They reported that they applied because their families asked them to do so, or to be eligible for particularly post-secondary education benefits (ibidem, pp. 15-16).

Whereas 90% of all Bill C-31 registrants live off-reserve and 90% of the 596 bands have fewer than 26 new registrants on their reserve, only 1.5% of all bands have more than 100 new band members living on-reserve (INAC, 1990, pp. ii-iii, p. 31). Many concerns expressed by Indian people on the impacts of Bill C-31 are related to the future, since not many new registrants live on the reserve yet. However, 40% of all new registrants, whether they have any history of residence on a reserve or not, would like to return to their homelands. Male registrants more than female registrants are inclined to return to their reserve sometime in the future. The most important reasons for not returning are reported to be: lack of employment opportunities, lack of housing, and anticipation of negative attitudes by the band population towards newcomers. The latter mostly concerns reinstated women and their families (INAC, 1990, pp. 18-19).

The Indian Act continues to divide Indian people. The band population in general appears to be largely afraid that Bill C-31 is not in its best interest and will eventually lead to assimilation and erosion of Indian community life and cultures (INAC, 1990, p. v;

NWAC/NCC/AFN, 1990, pp. i-ii). The newcomers are perceived as not being knowledgeable on Indian community life and traditions. Since they have resided off-reserve for longer periods of time, or even their entire life, it is expected that they will erode Indian traditions and will introduce white culture. Furthermore, because of the second-generation cut-off rule, and since mixed marriages are to take place on a larger scale, it is expected that in the future there will be no (status) Indians anymore. Bill C-31 registrants who live on-reserve are sometimes accused of being the cause of social problems that actually existed prior to the new Indian Act (NWAC/NCC/AFN, 1990, 29-30). There are special housing programmes for newcomers. While pre-Bill C-31 band members are still on the waiting list for a new house, a Bill C-31 registrant may obtain housing sooner. This causes anxiety and frustrations. Lastly, due to lack of funding, land, and other resources 'old' band members tend not to be willing to share this with newcomers. This holds especially for those newcomers who have no relatives on the reserves and who have never been in touch with the community.

As far as the new registrants are concerned, they believe that the Indian Act may have done away with some aspects of sex discrimination but has given room to others. Children of a reinstated Indian sister do not have the same right to transmit status as children of the Indian brother who previously married a non-aboriginal person. The second-generation cut-off rule appears to cause the most confusion and division within Indian families and communities (INAC, 1990, p. iv; NWAC/NCC/AFN, 1990, p. iii). Because of the establishment of two classes of status Indians, children of the female line of an Indian family have only a conditional right to band membership (NWAC/NCC/AFN, 1990, p. iii). Bill C-31 corresponding restrictive government policies perpetuate sex discrimination in the sense that new registrants may be prevented from exercising their band membership rights. Lastly, bands themselves may put up barriers, such as residency by-laws, to prevent persons from either exercising their membership rights or becoming a band member.

If there is a consensus among Indian people on Bill C-31 and its impact, it is on their discontent of government services which should facilitate bands to accommodate the newcomers in every possible way. Only when the federal government is prepared to respond to the Indian people's needs as defined by themselves will moral issues - such as sexual equality - not be snowed under anymore by

(hidden) economic arguments.

With respect to limited self-government, as of July 1989 122 self-government proposals had been submitted. Over 70 proposals are at various stages of negotiation, involving 190 bands. Furthermore, 70% of all Indian Affairs expenditure was administered by Indian bands themselves (cf. INAC, 1989, pp. 66-70). As has been mentioned earlier, limited self-government is not how Indian people perceive of self-government. Furthermore, the Indian Act sections pertaining to legal status and band membership remain intact. By June 1990, 232 bands had control of their own membership (INAC, 1990, p. iv).

Indian people were successful in withholding the Meech Lake Accord from becoming a political reality. Elijah Harper, a Cree NDP parliamentarian of Manitoba, prevented the accord from ratification, which should have taken place by June 23 1990. The Meech Lake Accord would have allowed larger provincial governments' interference in aboriginal affairs. Because of the continuing self-government aspirations of Indian people and the controversies with respect to Bill C-31, conflicts between the federal and provincial governments on the one hand, and Indian people on the other hand, as well as among themselves may be expected to occur in the future.

Suggestions for future research

The anthropological study on Canada's aboriginal women during the 1980s as presented in this publication was first and foremost of an exploratory nature. I express the hope that it will have an impetus on future research in this subject area. Women's movements in the Fourth World deserve the attention from scholars from all sorts of academic disciplines. Furthermore, an elaboration of a comparative perspective within the field of Women's Studies would be a valuable asset.

With respect to my area of research, follow-up research on the Inuit and Metis women's roles and positions within their own communities is necessary. With respect to Indian women, more historical research is needed on their roles and positions within their respective cultures. Until today, academic presuppositions have been too generalistic. Furthermore, the topic of my research could be extended to the Indian community level. What strategies do women use in order to obtain more power? Lastly, the Bill C-31 registrants form an interesting group to assess in how far law may (still) have

an impact on issues of ethnic identity. With respect to the latter, I would also like to draw attention to non-aboriginal women who, in the past, have obtained legal Indian status and who live on-reserve.

Lastly, a study on the full impacts of Bill C-31 is necessary around the turn of the century. Only then may we be able to assess whether the use of the traditional motherhood concept as a strategy has contributed to changing norms and values concerning Indian women's positions vis-a-vis men.

CHRONOLOGY OF KEY EVENTS

1850 - Indians are defined for the first time in colonial legislation

1867 - Canadian Confederation, the British North America Act, and section 91(24) Jurisdiction over 'Indians and Lands reserved for Indians' is given to the federal government

1869 - For the first time in legislation, Indian women are discriminated against on grounds of their sex, race, and marital status

1874 - Indians are registered, in anticipation of the Indian Act

1876 - Consolidation of laws pertaining to Indians in the Indian Act Sex-discriminatory provisions remain intact

1947 - Canadian Citizenship Act permits women to retain Canadian nationality if they marry an alien

1951 - Revision of the Indian Act Sex-discriminatory status provisions remain intact Establishment of double-mother rule

1960 - Status Indians become Canadian citizens (the franchise) Canadian Bill of Rights forbids any kind of discrimination

1968 - Mary Two-Axe Early reports sex discrimination against Indian women in the Indian Act to the Royal Commission on the Status of Women Establishment of the National Indian Brotherhood

1969 - The federal government releases its 'White Paper on Indian Policy' Canadian Metis Society established A year later, its name changed to Native Council of Canada

1971 - First national native women's conference held in Edmonton Inuit Tapirisat of Canada established

1972 - Establishment of the National Committee on Indian Rights for Indian Women

1973 - The Bedard and Lavell cases are decided by the Supreme Court of Canada

1974 - The Native Women's Association of Canada is established Citizenship Act equalizes men's and women's citizenship rights Non-aboriginal women who lost Canadian citizenship through marriage can now reacquire it

1975 - At a workshop, Inuit women express their wish to have a separate Inuit women's association

1976 - Joint presentation of NWAC and the National Committee on IRIW to the House of Commons Sub committee on Indian Women and the Indian Act

1977 - Canadian Human Rights Act amended but Indian women are prohibited from taking legal action to fight sex discrimination in the Indian Act

1978 The joint Cabinet/NIB Committee on the Indian Act revision is dissolved without any results

1979 Native Women's Walk and call for a national office of NWAC

1980 - National office of NWAC is established

1981 - The United Nations Human Rights Committee finds Canada and the Indian Act in violation of international law (Lovelace case) The Option Clause permits bands, upon their own request, to opt out of the sex-discriminatory regulations in the Indian Act

1982 - The Constitution Act has an equality provision as well as an aboriginal rights provision House of Commons Sub-Committee on Indian Women and the Indian Act releases its recommendations to resolve sex discrimination National Indian Brotherhood becomes the Assembly of First Nations

1983 - Establishment of the Metis National Council First First Ministers' Conference on Aboriginal Constitutional Matters Within the aboriginal rights article a sexual equality provision is established However, NWAC is not satisfied Penner report on Indian self-government is released

1984 - Inuit Women's Association formally established Second First Ministers' Conference Recommended amendment to Constitution Act, 1982, to include 'other rights' within the 35(4) sexual equality clause was rejected by the AFN NWAC invited to AFN's Legislative Assembly which resulted in the Edmonton Resolution, affirming AFN's support for removal of section 12(1)b of the Indian Act Bill C-47 (proposed amendments to the Indian Act) introduced in Parliament and stopped at the Senate Section 35(4) amendment to the Constitution Act came into force

1985 - Third First Ministers' Conference Bill C 31 established to remove sex discrimination, to restore Indian rights, and to allow bands to control their own membership

1987 - Last First Ministers' Conference, no results achieved respecting constitutional entrenchment of the right to aboriginal self-government Bill C 31 becomes the only legal avenue to establish limited Indian self government Meech Lake Accord Indian Affair's Bill C-31 Implementation Report

1990 - Indian Affairs' report on Bill C-31 in conjunction with AFN, NCC, and NWAC No recommendations made Parliament has yet to decide on future amendments of the Indian Act

APPLICATION OF ACT

Application of Act

4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Eskimos

Act may be declared inapplicable

(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 37 to 41, shall not apply to

(*a*) any Indians or any group or band of Indians, or

(*b*) any reserve or any surrendered lands or any part thereof,

Wife and minor children

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be R S , c 149, s 10

Persons entitled to be registered

11. (1) Subject to section 12, a person is entitled to be registered if that person

(*a*) on the 26th day of May 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

(*b*) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, have been agreed by treaty to be set apart, or

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,

(*c*) is a male person who is a direct descendant in the male line of a male person described in paragraph (*a*) or (*b*),

(*d*) is the legitimate child of

(i) a male person described in paragraph (*a*) or (*b*), or

(ii) a person described in paragraph (*c*),

(*e*) is the illegitimate child of a female person described in paragraph (*a*), (*b*) or (*d*), or

(*f*) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (*a*), (*b*), (*c*), (*d*) or (*e*)

Exception

(2) Paragraph (1)(*e*) applies only to persons born after the 13th day of August 1956 R.S., c. 149, s. 11, 1956, c. 40, s. 3

Persons not entitled to be registered

12. (1) The following persons are not entitled to be registered, namely,

(*a*) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(*a*),(*b*) or (*d*) or entitled to be registered by virtue of paragraph 11(1)(*e*),

unless, being a woman, that person is the wife or widow of a person described in section 11, and

(*b*) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

Protest re illegitimate child

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(*e*) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

Certificate

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Exception

(4) Subparagraphs (1)(*a*)(i) and (ii) do not apply to a person who

(*a*) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or

(*b*) is a descendant of a person described in paragraph (*a*) of this subsection

Idem

(5) Subsection (2) applies only to persons born after the 13th day of August 1956 R.S., c. 149, s. 12; 1956, c. 40, ss. 3, 4; 1958, c. 19, s. 1

Admission to band and transfer

13. Subject to the approval of the Minister and, if the Minister so directs, to the consent of the admitting band,

(*a*) a person whose name appears on a General List may be admitted into membership of a band with the consent of the council of the band, and

(*b*) a member of a band may be admitted into membership of another band with the consent of the council of the latter band

1956, c 40, s 5

Woman marrying outside band

14. A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member

R S , c 149, s 14

Payments to persons ceasing to be members

15. (1) Subject to subsection (2), an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from Her Majesty

(*a*) one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band, and

(*b*) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and Her Majesty if he had continued to be a member of the band

ents not to be made in certain cases

(2) A person is not entitled to receive any amount under subsection (1)

(*a*) if his name was removed from the Indian register pursuant to a protest made under section 9, or

(*b*) if he is not entitled to be a member of a band by reason of the application of paragraph 11(1)(*e*) or subparagraph 12(1)(*a*)(iv)

Payments to minors

(3) Where by virtue of this section moneys are payable to a person who is under the age of twenty-one, the Minister may

(a) pay the moneys to the parent, guardian or other person having the custody of that person or to the public trustee, public administrator or other like official for the province in which that person resides, or

(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one

Compensation for permanent improvements

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection (1), the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Commutation of payments under former Act

(5) Where, prior to the 4th day of September 1951, any woman became entitled, under section 14 of the *Indian Act*, chapter 98 of the Revised Statutes of Canada, 1927, or any prior provisions to the like effect, to share in the distribution of annuities, interest moneys or rents, the Minister may, in lieu thereof, pay to such woman out of the moneys of the band an amount equal to ten times the average annual amounts of such payments made to her during the ten years last preceding or, if they were paid for less than ten years, during the years they were paid R.S., c. 149, s. 15; 1956, c. 40, s. 6

Transfer of funds

16. (1) Section 15 does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection (3), there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section 15

Transferred member's interest

(2) A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by Her Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by Her Majesty on behalf of the latter band as other members of that band

Transfer of woman by marriage

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the per capita share of the capital and revenue moneys held by Her Majesty on behalf of the first-mentioned band is greater than the per capita share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the per capita share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section 15 shall be paid to her in such manner and at such times as the Minister may determine R.S., c. 149, s. 16

Elected councils

74. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act

Composition of council

(2) Unless otherwise ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief

Regulations

(3) The Governor in Council may, for the purposes of giving effect to subsection (1), make orders or regulations to provide

(*a*) that the chief of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor, and

(*b*) that the councillors of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band

Electoral sections

(4) A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide that the reserve shall for voting purposes be divided into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so established shall be distinguished or identified R.S., c. 149, s. 73; 1956, c. 40, s. 20.

Eligibility

75. (1) No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.

Nomination

(2) No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated. R.S., c. 149, s. 74.

Regulations governing elections

76. (1) The Governor in Council may make orders and regulations with respect to band elections and, without restricting the generality of the foregoing, may make regulations with respect to

(*a*) meetings to nominate candidates,

(*b*) the appointment and duties of electoral officers,

(*c*) the manner in which voting shall be carried out,

(*d*) election appeals, and

(*e*) the definition of residence for the purpose of determining the eligibility of voters.

General provincial laws applicable to Indians

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act R.S., c. 149, s. 87

Sale of intoxicants

94. A person who directly or indirectly by himself or by any other person on his behalf knowingly

(a) sells, barters, supplies or gives an intoxicant to

(i) any person on a reserve, or

(ii) an Indian outside a reserve,

(b) opens or keeps or causes to be opened or kept on a reserve a dwelling-house, building, tent, or place in which intoxicants are sold, supplied or given to any person, or

(c) makes or manufactures intoxicants on a reserve,

is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars or to imprisonment for a term of not less than one month and not more than six months, with or without hard labour, or to both fine and imprisonment R.S., c. 149, s. 93

Enfranchisement of Indian and wife and minor children

109. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(*a*) is of the full age of twenty-one years,

(*b*) is capable of assuming the duties and responsibilities of citizenship, and

(*c*) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

Enfranchisement of married women

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and, on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify

Where wife living apart

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband the Governor in Council may by order declare that the wife and the minor children are enfranchised

Order of enfranchisement

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council R S , c 149, s 108, 1956, c 40, s 26

Enfranchised person ceases to be Indian

110. A person with respect to whom an order for enfranchisement is made under this Act shall, from the date thereof, or from the date of enfranchisement provided for therein, be deemed not to be an Indian within the meaning of this Act or any other statute or law 1956, c 40, s 27

Source: Indian Act, 1970, pp 4251-4297

DEFINITION AND REGISTRATION OF INDIANS

Indian Register

Indian Register

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985

Deletions and additions

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom

Application for registration

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar R.S., c. I-6, s. 5; 1985, c. 27, s. 4

Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

(*a*) that person was registered or entitled to be registered immediately prior to April 17, 1985,

(*b*) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act,

(*c*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(*a*)(iv), paragraph 12(1)(*b*) or subsection 12(2) or under subparagraph 12(1)(*a*)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(*d*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(*a*)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(*e*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section, or

(*f*) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1)

Deeming provision

(3) For the purposes of paragraph (1)(*f*) and subsection (2),

(*a*) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(*a*), and

(*b*) a person described in paragraph (1)(*c*), (*d*) or (*e*) who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that paragraph R.S., c. I-6, s. 6; 1985, c. 27, s. 4

Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered

(*a*) a person who was registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act, or

(*b*) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject matter as that paragraph, and is also the child of a person who is not entitled to be registered

Exception

(2) Paragraph (1)(*a*) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act

Idem

(3) Paragraph (1)(*b*) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act R.S., c. I-6, s. 7; 1985, c. 27, s. 4

Band Lists

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band R.S., c. I-6, s. 8; 1985, c. 27, s. 4

Band Lists maintained in Department

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar

Existing Band Lists

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985

Deletions and additions

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List

Date of change

(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom

Application for entry

(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar R.S., c. I-6, s. 9; 1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10; 1985, c. 27, s. 4

Band control of membership

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership

Membership rules

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(*a*) after it has given appropriate notice of its intention to do so, establish membership rules for itself, and

(*b*) provide for a mechanism for reviewing decisions on membership

By law

(3) Where the council of a band makes a by-law under paragraph 81(1)(*p* 4) bringing this subsection into effect in respect of the band the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years

Acquired rights

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force

Idem

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(*c*) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List

Notice to the Minister

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band

Notice to band and copy of Band List

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(*a*) give notice to the band that it has control of its own membership and

(*b*) direct the Registrar to provide the band with a copy of the Band List maintained in the Department

Effective date of band's membership rules

(8) Where a band assumes control of its membership under this section the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band

Band to maintain Band List

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(*b*), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

Deletions and additions

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom. R.S., c. I-6, s. 10; 1985, c. 27, s. 4.

Membership rules for Departmental Band List

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

(*a*) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

(*b*) that person is entitled to be registered under paragraph 6(1)(*b*) as a member of that band;

(*c*) that person is entitled to be registered under paragraph 6(1)(*c*) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(*d*) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(*f*) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

Additional membership rules for Departmental Band List

(2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(*a*) if that person is entitled to be registered under paragraph 6(1)(*d*) or (*e*) and ceased to be a member of that band by reason of the circumstances set out in that paragraph, or

(*b*) if that person is entitled to be registered under paragraph 6(1)(*f*) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List

Deeming provision

(3) For the purposes of paragraph (1)(*d*) and subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered

Deeming provision

(3) For the purposes of paragraph (1)(*d*) and subsection (2),

(*a*) a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered, and

(*b*) a person described in paragraph (2)(*b*) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered

(addition IA, 1989, p. 10)

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be R S , c I-6, s 11, 1985, c 27, s 4

Entitlement with consent of band

12. Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13 1, any person who

(*a*) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(*b*) is a member of another band

is entitled to have his name entered in the Band List maintained in the Department for a band if the council of the admitting band consents R S , c I-6, s 12 1985, c 27, s 4

Limitation to one Band List

13. Notwithstanding sections 11 and 12 no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department R S , c I-6, s 13 1985, c 27, s 4

Decision to leave Band List control with Department

13.1 (1) A band may, at any time prior to the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision

Notice to the Minister

(2) Where a band decides to leave the control of its Band List with the Department under subsection (1) the council of the band shall forthwith give notice to the Minister in writing to that effect

Subsequent band control of membership

(3) Notwithstanding a decision under subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under section 10 1985, c 27, s 4

Return of control to Department

13.2 (1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision

Notice to the Minister and copy of membership rules

(2) Where a band decides to return control of its Band List to the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under subsection 10(2) while the band maintained its own Band List

Transfer of responsibility to Department

(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11 1985 c 27, s 4

Entitlement retained

13.3 A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13 2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13 2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11 1985, c 27, s 4

Notice of Band Lists

Copy of Band List provided to band council

14. (1) Within one month after the day an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day

List of additions and deletions

(2) Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

Lists to be posted

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the band R.S., c. I-6, s. 14; 1985, c. 27, s. 4

Inquiries

Inquiries relating to Indian Register or Band Lists

14.1 The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein 1985, c. 27, s. 4

Protests

Protests

14.2 (1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor

Protest in respect of Band List

(2) A protest may be made under this section in respect of the Band List of a band by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.

Protest in respect of Indian Register

(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.

Onus of proof

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest

Registrar to cause investigation

(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision

Evidence

(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just

Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive 1985, c. 27, s. 4

Appeal

14.3 (1) Within six months after the Registrar renders a decision on a protest under section 14.2,

(*a*) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect of whose name the protest was made or his representative, or

(*b*) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may by notice in writing, appeal the decision to a court referred to in subsection (5)

Copy of notice of appeal to the Registrar

(2) Where an appeal is taken under this section the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal

Material to be filed with the court by Registrar

(3) On receipt of a copy of a notice of appeal under subsection (2) the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar

Decision

(4) The court may, after hearing an appeal under this section,

(*a*) affirm, vary or reverse the decision of the Registrar, or

(*b*) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation

Court

(5) An appeal may be heard under this section

(*a*) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court,

(*b*) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench,

(*c*) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate, or

(*d*) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the protest resides, or of such other county or district as the Minister may designate 1985, c 27, s 4

Source: Indian Act, 1985, pp 4-14

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CURRICULUM VITAE

Lilianne E Krosenbrink-Gelissen was born on December 25, 1957, in Beek, Limburg, The Netherlands After highschool graduation (Atheneum-A) she moved to Nijmegen in 1976 In 1977 she finished secretarial training at a private school In the same year she started studying anthropology at the Catholic University of Nijmegen In 1983 she did fieldwork among Indian and Metis women in Manitoba, Canada Both her research report and M.A thesis dealt with pressing sociopolitical and cultural issues concerning aboriginal women in Canada She took her M.A in 1984 Preparations for the Ph D research began in March 1985 From 1987 until 1990 she was co-editor of 'The Kiva', a journal of the Working Group on North American Indians in Belgium and the Netherlands From February 1990 until July 1991 she was associate researcher at the Centre for Women's Studies at the Catholic University of Nijmegen She has written a number of articles and conference papers on various topics dealing with Canada's aboriginal peoples, and particularly aboriginal women She is member of the Association for Canadian Studies in The Netherlands, the Dutch Women's Studies Society, the Dutch Association of Sociologists and Anthropologists, and the Commission on Folk Law and Legal Pluralism

HET SEXE-GELIJKHEIDSBEGINSEL ALS EEN INHEEMS RECHT
de Canadese inheemse vrouwenorganisatie, NWAC, en het constitutionele proces omtrent de rechten van inheemse volken, 1982-1987

Tot Canada's oorspronkelijke bewoners worden de volgende groepen gerekend de Indianen, de Metis (een volk van gemengd blanke en Indiaanse afkomst) en de Inuit (Eskimo's) Deze drie inheemse volken zijn als zodanig in Canada's nieuwe grondwet van 1982 erkend, evenals de aan hun status verbonden collectieve rechten - 'aboriginal rights' Het feit dat in Canada inheemse volken en hun rechten constitutioneel erkend zijn is een uniek fenomeen Deze rechten zijn echter niet nader gespecificeerd Teneinde tot een sluitende definitie te komen voorzag de Canadese grondwet in formele onderhandelingen tussen de leiders van federale en provinciale overheden aan de ene kant en de leiders van nationale inheemse organisaties aan de andere kant Onderhandelingen hebben plaatsgevonden van 1982 tot en met 1987 en deze periode staat algemeen bekend als het constitutionele proces omtrent de rechten van inheemse volken

Rond 1982 bestonden er vijf nationale inheemse organisaties, te weten
- de Assembly of First Nations (AFN, een Indiaanse organisatie),
- de Metis National Council (MNC),
- de Inuit Tapirisat of Canada (ITC),
- de Native Council of Canada (NCC, een organisatie van niet-officieel erkende Indiaanse en Metis personen) en
- de Native Women's Association of Canada (NWAC) Deze laatste is een nationale inheemse vrouwenorganisatie waartoe zowel officieel als niet officieel erkende inheemse vrouwen gerekend worden

Alle organisaties achtten deelname aan het constitutionele proces betreffende de rechten van inheemse volken van het grootste belang Voor het eerst in de Canadese geschiedenis was er een politiek forum geschapen met als doel de relatie tussen inheemse volken en de Canadese maatschappij in haar geheel aan de orde te stellen en te wijzigen

Dit proefschrift tracht de lezer inzicht te geven in de wijze waarop Canadese inheemse vrouwen georganiseerd waren en de strategieen die zij gebruikten ten einde de voor vrouwen specifieke politieke doelen te bereiken gedurende het constitutionele proces omtrent de rechten van inheemse bewoners Aangezien de Native Women's Association niet uitgenodigd werd door de Canadese regering om formeel deel te nemen aan constitutionele onderhandelingen, maakt dit de onderzoeksvraag eens te meer interessant Dit proefschrift handelt voornamelijk over de dubbele identiteit van inheemse vrouwen met name die van Indiaanse vrouwen - en de dilemma's en conflicten die dit voor hen teweegbrengt in een politieke context van inheemse constitutionele claims Deze antropologische studie kan opgevat worden als een 'case study' van een Vierde Wereld vrouwenbeweging Dit proefschrift heeft haar plaats in het veld van Vrouwenstudies Bij de theoretische perspectieven is ook aandacht geschonken aan studies van ethniciteit

Tijdens het constitutionele overleg tussen de vier nationale inheemse organisaties en Canada's politieke leiders was het belangrijkste onderwerp dat van het recht op zelfbeschikking - 'aboriginal self-government' Dit kan algemeen omschreven worden als het recht van inheemse volken om zelf te bepalen wie tot hun samenleving behoort en het recht op eigen autonome politieke en wetgevende

instituties, ingevuld volgens traditionele culturele gebruiken van de betreffende volken Hoe het inheemse zelfbeschikkingsrecht gestalte zou worden gegeven kan dus verschillen per samenleving of gemeenschap

Wie is de Native Women's Association of Canada en wat beoogde deze organisatie tijdens het constitutionele proces betreffende inheemse rechten? NWAC was in 1974 ontstaan onder invloed van twee mondiale bewegingen de mensenrechtenbeweging en de vrouwenbeweging Hierdoor kwam er in het algemeen meer interesse voor de rechten van minderheden, meer respect voor andere culturen en meer aandacht voor de maatschappelijke positie van vrouwen Inheemse vrouwen hadden behoefte aan een eigen organisatie omdat ze vonden dat reeds bestaande nationale inheemse organisaties mannelijk dominant waren in leiderschap, in politieke besluitvorming en in de keuze van politieke mandaten

Van meet af aan bleek NWAC overwegend een Indiaanse vrouwenorganisatie te zijn Het merendeel der leden bestond uit Indiaanse vrouwen met als gevolg dat NWAC s doelstellingen gedicteerd werden door Indiaanse vrouwen In dit opzicht vormde de Assembly of First Nations de mannelijke tegenhanger van NWAC De Native Women's Association onderschreef het streven van de andere vier inheemse organisaties om het inheems zelfbeschikkingsrecht als belangrijkste aspect van aboriginal rights' grondwettelijk gegarandeerd te krijgen De organisatie was echter uniek in haar claim dat het inheems zelfbeschikkingsprincipe ten allen tijde ondergeschikt gemaakt diende te worden aan het sexe-gelijkheidsbeginsel Het zoeken naar de reden waarom NWAC van de andere inheemse organisaties verschilde in het stellen van haar politieke prioriteiten voert ons terug naar de tijd waarin de Indian Act ontstond en de consequenties die dit heeft gehad voor Indiaanse gemeenschappen en de man vrouw verhoudingen daarbinnen De Indian Act uit 1876 was een consolidatie van tot dan toe bestaande Indiaanse regelgevingen Met betrekking tot het onderwerp van deze studie zijn met name de sexe-discriminatoire statusbepalingen van belang De Indian Act bepaalde wie een officieel erkend Indiaans persoon was en welke rechten daaraan verbonden waren De culturele verscheidenheid in Indiaanse afstammings en verwantschapsprincipes en het recht van de betrokkenen om hun ethnische identiteit zelf te bepalen werd genegeerd De juridische statusbepalingen legden een uniform Indiaans identificatieprincipe aan alle Indianen op Belangrijk hierbij was dat het ethnische behoren voortaan via de man geregeld werd Indien een Indiaanse vrouw huwde met een niet Indiaan (of een Indiaan zonder juridische status) verloor zij haar Indiaanse status Haar kinderen kwamen niet in aanmerking voor juridische erkenning van een Indiaanse identiteit, laat staan Indiaanse rechten In geval een vrouw weduwe werd of ging scheiden veranderde dit niets aan haar juridische positie Een Indiaanse man echter was gevrijwaard van dergelijke sancties Zijn al dan niet Indiaanse echtgenote kreeg, c q behield automatisch Indiaanse status, evenals de kinderen die uit het huwelijk voortkwamen Het verlies (of de ontzegging) van Indiaanse status hield in dat formeel de Indiaanse identiteit niet erkend werd en dat dergelijke niet-status Indianen geen recht hadden te wonen binnen een Indiaanse gemeenschap, het reservaat, of daar begraven te worden De Indian Act bepaalde niet alleen de formele ethnische identiteit, maar regelde ook vrijwel alle aspecten van het dagelijks leven op de reservaten Inherent aan deze bepalingen waren 19e eeuwse Europese sexe-discriminatoire noties van vrouwelijkheid Vrouwen werden in het algemeen gezien als ondergeschikte individuen en als handelingsonbekwaam Zo werd Indiaanse vrouwen op de reservaten elk politiek medezeggenschapsrecht ontzegd en konden zij tot 1951 geen politieke functies bekleden De Indian Act is behoudens enkele kleine wijzigingen tot 1985 van kracht gebleven Aangezien de Indian Act zo'n ijzeren

greep had op het alledaagse leven van Indianen is het niet verwonderlijk dat gaandeweg Indiaanse man-vrouw verhoudingen zich wijzigden in het nadeel van vrouwen Zij hadden (en hebben) in meerdere mate te lijden van de Indian Act dan mannen omdat ze dubbel gediscrimineerd werden op grond van hun 'gender and culture' Indiaanse vrouwen die hun juridische status verloren hadden werd niet alleen hun geboorterecht ontzegd door de Canadese overheid maar ze werden door hun cultuurgenoten vaak gestigmatiseerd als zijnde geen 'echte' Indianen Sexe-discriminatoire juridische identiteitsbepalingen werden gaandeweg overgenomen door de Indianen onder het motto 'de enige echte Indiaan is een status Indiaan' Dat niet status Indiaanse vrouwen (evenals hun kinderen) van deze stigmatisering te lijden hadden is verheven boven elke twijfel

Het bovengenoemde verklaart waarom de Native Women's Association het sexe-gelijkheidsbeginsel hoog in haar politieke vaandel droeg NWAC hoopte dat constitutionele garanties van sexe-gelijkheid tussen inheemse mannen en vrouwen gaandeweg attitudes zou veranderen in inheemse gemeenschappen, dat de positie van vrouwen daar verbeterd zou worden en dat vrouwen volwaardig zouden kunnen participeren in toekomstige autonomie In dit streven werd NWAC gesteund door Metis en Inuit vrouwen Of Indiaanse gemeenschappen van origine al dan niet het principe van sexe-gelijkwaardigheid hadden gekend was niet aan de orde Het ging er hoofdzakelijk om de door toedoen van de Indian Act ontstane ongelijkheid een halt toe te roepen en de toegebrachte schade aan vrouwen zoveel mogelijk te herstellen Dientengevolge moest de door NWAC nagestreefde constitutionele sexe-gelijkheidsgarantie er ook toe bijdragen dat de Indian Act gewijzigd werd en dat niet-status Indiaanse vrouwen en hun kinderen formeel hun Indiaanse identiteit erkend kregen, met alle rechten van dien

De Canadese Constitution Act van 1982 voorzag in gelijkheid van inheemse en niet inheemse Canadezen en in gelijkheid tussen mannen en vrouwen in het algemeen, maar het sexe-gelijkheidsbeginsel voor inheemse personen in het algemeen en Indiaanse personen in het bijzonder was niet expliciet aan de orde gesteld NWAC kon gezien de gelijkheidsrechten in de nieuwe grondwet en de sterke feministische lobby steun verwachten van de Canadese overheid Het grote probleem was echter dat de Native Women's Association deelname aan het constitutionele proces betreffende inheemse rechten was ontzegd De Canadese regering had daarvoor als argument dat NWAC niet representatief genoeg was volgens democratische principes Immers, zij vertegenwoordigde alleen vrouwen Haar mannelijke tegenhanger, de Assembly of First Nations, was eveneens gekant tegen NWAC's deelname Men vond dat de organisatie, gezien haar prioriteit van sexe gelijkheid, het Indiaanse streven naar autonomie in gevaar kon brengen Het opleggen aan Indiaanse gemeenschappen van dit gelijkheidsprincipe werd gezien als een verontachtzaming van het zelfbeschikkingsrecht De AFN was de mening toegedaan dat ze de problemen omtrent discriminatie van vrouwen beter zelf konden regelen zodra hun autonomie constitutioneel was vastgelegd en deze in praktijk gebracht kon worden door de afzonderlijke gemeenschappen De Native Women's Association had de steun van de Assembly of First Nations evenwel hard nodig AFN's achterban moest ervan doordrongen worden dat de politieke doelstellingen van NWAC legitiem waren

Binnen de discussie omtrent het gebruik van strategieen rees de volgende vraag hoe maakt NWAC haar aanspraken op het sexe-gelijkheidsbeginsel relevant met betrekking tot de inheemse eis van het recht op zelfbestuur? De Indiaanse ideologische conceptie van traditioneel moederschap werd door NWAC strategisch gebruikt Denkbeelden omtrent traditioneel moederschap weerspiegelden hoe Indianen aankeken tegen de oorspronkelijke man-vrouw verhoudingen in hun

samenlevingen Ongeacht de grote culturele verscheidenheid waren Indiaanse mannen en vrouwen volstrekt gelijkwaardig aan elkaar Gezien de belangrijke rol van moeders (vrouwen) als biologische en culturele zorgdragers voor het voortbestaan van Indiaanse samenlevingen kon hun positie niet ondergeschikt zijn aan die van mannen Met andere woorden, sexe-ongelijkheid is niet oorspronkelijk Indiaans maar overgedragen door de westerse cultuur Eisten de Indianen zelfbestuur op basis van hun eigen culturele gebruiken dan moest de positie van vrouwen opgewaardeerd worden en moesten niet status Indiaanse vrouwen juridisch gerehabiliteerd worden Deze standpunten werden door NWAC benadrukt en vormden de leidraad van haar lobby-activiteiten gedurende het constitutionele proces omtrent de rechten van inheemse volken

De reden waarom juist de ideologische conceptie van traditioneel Indiaans moederschap een strategische sleutelrol speelde en niet een ander denkbeeld is dat het een veelheid van functionele mechanismen integreerde Alle inheemse mannen en vrouwen hadden unaniem dezelfde conceptie van traditioneel moederschap Aangezien deze opvatting culturele verschillen tussen de inheemse volken en de Indianen onderling deed vervagen stimuleerde het inheemse groepscohesie Automatisch kreeg NWAC door gebruikmaking van deze conceptie steun van Inuit en Metis vrouwen Dit was belangrijk omdat, ondanks de dominantie van Indiaanse vrouwen, de organisatie nog steeds gezien werd als een politiek vertegenwoordiger van alle inheemse vrouwen De conceptie van traditioneel moederschap weerspiegelde hoe inheemse vrouwen in het algemeen en Indiaanse vrouwen in het bijzonder zichzelf zagen en gezien wensten te worden Bovendien gaf deze richting aan de rol die inheemse vrouwen zouden moeten spelen binnen toekomstig autonome inheemse samenlevingen en zette aan tot actiebereidheid

De conceptie van traditioneel moederschap appelleerde ook aan de oppositie-ideologie die binnen het politieke forum door inheemse organisaties werd gebruikt Sexe-ongelijkheid werd immers toegeschreven aan de inmenging van de westerse cultuur en behoorde niet toe aan traditionele inheemse culturen Het beginsel van sexe gelijkheid werd geintegreerd in dat van inheems zelfbestuur zonder herstel van de tradities zou de culturele eigenheid van autonome Indiaanse samenlevingen irrelevant zijn Het recht op het beleven van de eigen cultuur - een inheems recht - moest derhalve gelijk staan aan opwaardering van de positie van vrouwen Sexe-gelijkheid moest dus niet opgevat worden als een feministische doelstelling volgens westerse democratische tradities Integendeel, door gebruikmaking van de conceptie van traditioneel moederschap werd sexe-gelijkheid door de Native Women's Association voorgesteld als een aspect van de collectieve rechten van inheemse volken in Canada Deze conceptie rechtvaardigde de politieke doelen van NWAC naar haar eigen achterban, naar de andere inheemse organisaties en naar de Canadese maatschappij in haar geheel De conceptie van traditioneel moederschap leerde sexe-gelijkheid van inheemse mannen en vrouwen aan de inheemse oppositie-ideologie die gebruikt werd ter verkrijging van zelfbestuur binnen het kader van constitutionele inheemse rechten Met andere woorden, de argumentatie van NWAC verplichtte de Assembly of First Nations om de vrouwen in hun streven te steunen omdat ze anders hun eigen politieke doelen en motivaties zouden ondergraven

Ondanks het feit dat de Native Women's Association niet in staat werd gesteld formeel deel te nemen aan het constitutionele proces betreffende de rechten van inheemse volken heeft het wel degelijk een rol weten te spelen en de onderhandelingen beinvloed NWAC wist door het opbouwen van politieke netwerken met zowel andere inheemse organisaties als federale en provinciale overheden sexe-gelijkheid op de constitutionele agenda te krijgen Het nam deel aan

de onderhandelingen door als gedelegeerde op te treden in het kamp van zowel diverse provinciale overheden als dat van (eerst) de Native Council of Canada en (later) de Assembly of First Nations Toen het constitutionele proces in 1987 ten einde liep was het resultaat dat sexe gelijkheid expliciet en constitutioneel gegarandeerd werd binnen het kader van inheemse rechten Helaas bleven de resultaten met betrekking tot een nadere invulling van het begrip inheemse rechten uit

De Indian Act, waarin expliciet sexe-discriminatie was vervat, werd gewijzigd Voortaan werden juridische identiteitsbepalingen vastgesteld volgens het principe van sexe-gelijkheid Niet-status vrouwen en hun kinderen kwamen in aanmerking voor rehabilitatie van hun Indiaanse status en de daaraan verbonden rechten De nieuwe Indian Act die sinds 1985 van kracht was (Bill C-31) leverde echter talloze problemen op Het bleek dat niet alle niet-status Indianen in aanmerking kwamen voor 'reinstatement' en dat de nieuwe Indian Act op indirecte wijze nog steeds sexe-discriminatoir was Een ander belangrijk probleem ontstond door de loskoppeling van Indiaanse status en lidmaatschap van een Indiaanse gemeenschap Omdat er binnen het constitutionele forum geen resultaten bereikt konden worden omtrent Indiaans zelfbestuur werden er in de Indian Act bepalingen opgenomen die het mogelijk maakten dat Indiaanse gemeenschappen voortaan zelf bepaalden wie lidmaatschap verkreeg Dit kan gezien worden als een beperkte vorm van zelfbestuur Evenwel, niet-status Indiaanse vrouwen die gerehabiliteerd werden kon lidmaatschap van de Indiaanse samenleving waar zij geboren waren niet ontzegd worden Deze juridische voorziening was getroffen om discriminatie van deze vrouwen in de praktijk uit te sluiten De discussie omtrent zelfbestuur bleef echter ook na 1987 gaande en Indiaanse gemeenschappen bleken zich te verzetten tegen terugkeer van gerehabiliteerde niet-status Indiaanse vrouwen Door de verwevenheid van de kwesties sexe-gelijkheid, ethnische identiteit en zelfbestuur is het moeilijk vast te stellen of de argumenten van Indiaanse leiders tegen de speciaal op vrouwen van toepassing zijnde bepalingen in de Indian Act een sexe-discriminatoir karakter dragen of dat het hier gaat om de discussie rond zelfbestuur Het feit dat de Indiaanse vrouwenproblematiek daarmee onlosmakelijk is verbonden maakt het geheel uiterst complex

In elk geval heeft de Native Women s Association of Canada de politieke doelen van sexe gelijkheid door strategisch gebruik van de conceptie van traditioneel moederschap bereikt gedurende het constitutionele proces betreffende de rechten van inheemse volken Of het bereikte resultaat op juridisch vlak uiteindelijk tot gevolg zal hebben dat attitudes ten aanzien van vrouwen zich in hun voordeel zullen wijzigen zal de toekomst moeten uitwijzen Feit is wel dat niet de Native Women's Association maar de vrouwen (en mannen) in de Indiaanse gemeenschappen bereid moeten zijn om actie te ondernemen teneinde hun sociale werkelijkheid te veranderen

The Canadian Constitution Act of 1982 recognizes for the first time aboriginal peoples and their according rights 'Aboriginal peoples' refers to the Indians, Metis, and Inuit For the purpose of defining aboriginal rights the Constitution Act provides for a negotiation process between the state authorities and national aboriginal organizations Between 1982 and 1987 a series of conferences on aboriginal rights took place This period is referred to as the constitutional process on aboriginal matters Four national aboriginal organizations were invited to participate in the process of defining aboriginal rights These organizations can generally be characterized as male-dominated The Native Women's Association - the only national aboriginal women's political body - was not invited to participate officially The research question of this study is centred around the way aboriginal women, and particularly Indian women, are organized and the strategies they use to pursue their political goals in the constitutional process on aboriginal matters In order to comprehend how aboriginal rights are politically and legally relevant to and affect Indian women, it is necessary to first explore the following questions why does a separate national aboriginal women's organization exist, do women's political aspirations differ from those of their male counterparts, and if so, why and to what extent? In this study, the author argues that the aboriginal peoples' ideological concept of traditional motherhood became a key symbol around which the Native Women's Association's strategies were built, in order to obtain sexual equality guarantees with respect to aboriginal rights in the Constitution Act
This study is a good example of a Fourth World women's movement

The 'Nijmeegs Instituut voor Comparatieve Cultuur- en Ontwikkelingsstudies' (NICCOS - Nijmegen Institute for Comparative Studies in Development and Cultural Change) of the Catholic University of Nijmegen, The Netherlands, was established in 1989 in order to co-ordinate and stimulate the research in the Third World and in peripheral regions of the industrialized countries carried out by the Department of Cultural and Social Anthropology, the Department of Geography of Developing Areas, the Third World Centre, the Centre for Women's Studies, the Missiology Department and the Department of Middle East Languages and Cultures